17-671

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 408.

THE UNITED STATES, PLAINTIFF,

vs.

EDWARD P. CURTIS.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 18, 1880.

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1 UNITED STATES OF AMERICA,
Eastern District of Missouri:

In the circuit court of the United States in and for said district.

Be it remembered that on the 30th day of August, A. D. 1879, there was filed in the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri a certain transcript of record, in words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

IN CASE NO. 1591 OF THE UNITED STATES, plaintiff,
against
EDWARD P. CURTIS, DEFENDANT.

Be it remembered that on the 13th day of June, A. D. 1879, the grand jury of the United States of America in and for the eastern district of Missouri returned into the district court of said United States in and for said district an indictment in the above entitled cause; which said indictment is in the words and figures following, to wit:

Indictment.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

2 In the district court of the United States for the eastern district of Missouri, at the May term thereof, A. D. 1879.

The grand jurors of the United States, duly empanneled, sworn, and charged to enquire in and for the eastern district of Missouri, on their oaths, present that on the first day of January, in the year of our Lord one thousand eight hundred and seventy-six, and thence continuously to the nineteenth day of June, in the year of our Lord one thousand eight hundred and seventy-seven, the National Bank of the State of Missouri, in St. Louis, was a national banking association theretofore created and organized under and by virtue of an act of Congress entitled "An act to provide a national currency secured by a pledge of the United States bonds, and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and was during the period of time aforesaid acting and carrying on the business of banking in the city of St. Louis, within said district, under the said act of Congress and the acts amendatory thereof; that on the eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-six, the Comptroller of the Currency of the United States made a certain request and
3 requisition to and upon said association for a report from and by said association, to be made according to the form heretofore prescribed by him, the said Comptroller, exhibiting the resources and liabilities of said association at the close of the business of said association on a certain day, then passed, specified by said Comptroller in said request and requisition, that is to say, at the close of the business

of said association on the thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy-six.

And the jurors aforesaid, on their oaths aforesaid, do further present that on the eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-six, the said association did prepare a certain report, according to the form theretofore prescribed by the Comptroller of the Currency, to be transmitted, as required by law, to said Comptroller in compliance with the said request and requisition, which said report, so prepared as aforesaid, to be transmitted as aforesaid, on said eighteenth day of July, purported to exhibit, according to the said form prescribed as aforesaid, in detail and under the appropriate heads, the resources and liabilities of said association at the close of the business of said association on the thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy-six, and which
4 said report, so prepared as aforesaid, did, on the said eighteenth day of July, indicate and declare, in substance and effect, among other things, under the head of "loans and discounts" on said report, that at the close of the business of said association on the said thirtieth day of June there were due and owing to said association, and included in the resources of said association as a portion of loans and discounts, no debts such as are defined by the provisions of section five thousand two hundred and four of the Revised Statutes of the United States to be bad debts, and which said report did, on said eighteen day of July, indicate and declare in substance and effect, among other things, under the head of loans and discounts on said report, that at the close of the business of said association on said thirtieth day of June the liabilities to said association of the directors of said association as payers, were six hundred and ten thousand six hundred and eighty-two dollars and ninety-five cents, and *and* which said report, so prepared as aforesaid, did, on the said eighteenth day of July, indicate and declare in substance and effect, among other things, under the head "checks and other cash items" on said report, that at the close of the business of said association on the said thirtieth day of June there were, in and among the resources of said association, checks for the
5 aggregate sum of eighty-four thousand five hundred and eleven dollars and ninety-one cents, and which said report, so prepared as aforesaid, did, on the said eighteenth day of July, indicate and declare in substance and effect, among other things, under the head of "overdrafts" on said report, that at the close of the business of said association on the said thirtieth day of June there were among the resources of said association no checks or drafts upon which money had been by said association paid in excess of the moneys theretofore deposited with said association to the credit of the makers of said checks or drafts, and which said report, so prepared as aforesaid, did, on said eighteenth *eighteenth* day of July, indicate and declare in substance and effect, among other things, as follows: That the surplus fund of said association, at the close of the business of said association on the said thirtieth day of June, was two hundred and forty-three thousand and four hundred and sixty-two dollars and sixty-nine cents; that the amount of currency on deposit with and in said association at the close of the business of said association on the day last aforesaid, known and designated by said association as "individual deposits subject to checks," was one million five hundred and forty-two thousand four hundred and fifty-six dollars and thirty-six cents; that the amount
6 of money due from said association to other national banks was, at the close of the business of said association on the last day

aforesaid, the sum of one hundred and thirty thousand three hundred and four dollars and eighty-eight cents; and which said report so prepared as aforesaid, was, on said eighteenth day of July, required by said act of Congress first aforesaid to be verified by the oath or affirmation of the president or cashier of said association.

And the jurors aforesaid, on their oaths aforesaid, do further present that Edward P. Curtis, late of said district, on the said eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-six, at said district, being then and there the cashier of said association, wickedly and unlawfully contriving and intending to deceive the said Comptroller and the public, and certain persons to said jurors unknown, with respect to the true condition of the resources and liabilities of said association at the close of the business of said association on the said thirtieth day of June, in the year of our Lord one thousand eight hundred and seventy-six, and wrongfully, wickedly, and unlawfully contriving and intending to misrepresent to said Comptroller and to the public the true condition of the resources and liabilities of said association at the close of the business of said association on the
7 said day last aforesaid, did produce and exhibit the said report so made as aforesaid for verification by the oath of him, the said Edward P. Curtis, cashier as aforesaid, to and before one John M. Dickson, then and there, that is, on the said eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-six, at said district, a notary public within and for the county of St. Louis within said district, and as such notary a person having competent authority to administer an oath to him, the said Edward P. Curtis, cashier as aforesaid, in the premises, which said report so produced and exhibited to and before the said John M. Dickson, notary as aforesaid, had, on the day and year last aforesaid thereunder written a certain declaration, which said declaration was in substance and effect as follows: "I, Edward P. Curtis, cashier of the National Bank of the State of Missouri, in St. Louis, do solemnly swear that the above statement is true to the best of my knowledge and belief," which said declaration was on the day last aforesaid, and at said district, subscribed by him, the said Edward P. Curtis, cashier as aforesaid; that the said Edward P. Curtis, cashier as aforesaid, being on the day last aforesaid and at said district before and by the said James M. Dickson, notary as aforesaid, duly sworn, did, on the day last aforesaid, and at said district, take his corporal oath concerning the truth of said declaration subscribed
8 by him as aforesaid, which said oath was, on the day last aforesaid and at said district, in a case in which a law of the United States, to wit, the act of Congress first aforesaid, authorized an oath to be administered as aforesaid; that it became and was on the last day aforesaid, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was sworn and took his corporal oath as aforesaid, material that the said Comptroller should receive and that the said report should exhibit a true and correct statement of the resources and liabilities of said association at the close of the business of said association on the said thirtieth day of June; that it become and was on the said eighteenth day of July, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report and that the said report should exhibit, among other things the aggregate amount of debts defined by the provisions of section five thousand two hundred and four of the Revised Statutes of the United States as bad debts due and owing to said

association at the close of the business of said association on the said thirtieth day of June aforesaid, and included under the head of "loans and discounts" on said report; that it became and was on the
9 said eighteenth day of July, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, the amount of the liabilities to said association of the directors of said association, as payers, existing at the close of the business of said association on the said thirtieth day of June; that it became and was on the said eighteenth day of July, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report and that the said report should exhibit, among other things, the nature and character of that portion of the resources of said association designated on said report as "checks and other cash items;" that it became and was on the said eighteenth day of July, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head "overdrafts" on said report, the amount of money remaining at the close of the business
10 of said association on the said thirtieth day of June, drawn and paid out of the moneys and funds of said association upon checks or drafts in excess of the moneys theretofore deposited with said association to the credit of the makers of such checks or drafts; that it became and was on the said eighteenth day of July at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head "surplus fund" on said report, the true amount of the moneys of said association actually belonging to the surplus fund of said association at the close of the business of said association on the said thirtieth day of June; that it became and was on the said eighteenth day of July, at the said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head "individual deposits subject to check" on said report among the liabilities of said association, the true aggregate amount of currency on deposit with said association
11 subject to check at the close of the business of said association on the said thirtieth day of June; that it became and was, on the said eighteenth day of July, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath, as aforesaid, material that the said Comptroller should know by means of the said report and that the said report should exhibit, among other things, the true aggregate amount of money due from said association at the close of the business of said association on the said thirtieth day of June to other national banks.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said Edward P. Curtis, cashier as aforesaid, being so sworn as aforesaid, wickedly and corruptly devising to suppress a full and true disclosure of the condition of the resources and liabilities of said association, did, on the said eighteenth day of July, at said district, and at

the time he was so sworn and so took his corporal oath as aforesaid, in and by his said oath to said declaration before the said John M. Dickson, notary as aforesaid, he, the said John M. Dickson, notary as aforesaid, being on the said eighteenth day of July, and at said district, a person having competent authority to administer said oath to said declaration in that behalf, falsely, corruptly, knowingly, wilfully, maliciously,
12 and wickedly state, declare, and swear in substance and to the effect following, that is to say, "I, Edward P. Curtis, cashier of the National Bank of the State of Missouri, in St. Louis," do solemnly swear that the above statement (meaning the said report so prepared by said association as aforesaid and purporting to show the resources and liabilities of said association at the close of the business of said association on the said thirtieth day of June) is true to the best of my knowledge and belief (meaning to the best of the knowledge and belief of him, the said Edward P. Curtis, as cashier as aforesaid), which said report so prepared by said association as aforesaid, and verified by the said oath and declaration as aforesaid, was afterwards, to wit, on said eighteenth day of July, attested by Barton Bates, James H. Britton, and Julius S. Walsh, directors of said association, and which said report was afterwards, to wit, on said eighteenth day of July, transmitted by said association to the said Comptroller.

Whereas, in truth and in fact, the said report, so purporting, as aforesaid, to exhibit the resources and liabilities of the said association at the close of the business of said association on the said thirtieth day of June, was not on the said eighteenth day of July, and at the time the said oath was taken, in all respects true, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he was sworn
13 and took said oath and made the said declaration as aforesaid.

And whereas, in truth and in fact, the said report, so produced as aforesaid to the said John M. Dickson, notary as aforesaid, and so purporting as aforesaid to be a true report of the resources and liabilities of said association at the close of the business of said association on the said thirtieth day of June was not, on the said eighteenth day of July and *that* the time said oath was taken, true, in this, that at the close of the business of said association on the said thirtieth day of June there were due and owing to said association, and included in the resources of said association as a portion of loans and discounts, debts such as were then defined by section five thousand two hundred and four of the Revised Statutes of the United States to be bad debts, amounting to a large sum, to wit, the sum of seven hundred and ninety-seven thousand two hundred and fourteen dollars and twenty-nine cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there was due to said association at the close of the business of said association, on the said thirtieth day of June from one James B. Eads the sum of five hundred and fourteen thousand
14 and seventy-two dollars and thirty-nine cents; from one James H. Britton the sum of three hundred and eighty-three thousand seven hundred and thirty-nine dollars and ten cents; from one Barton Bates the sum of two hundred and twenty-nine thousand six hundred and eighty-one dollars and forty-nine cents; and from one Julius S. Walsh the sum of twenty-five thousand and fifty-five dollars and fifty-five cents, they, the said Eads, Britton, Bates, and Walsh, being on the day last aforesaid directors of said association, for which said sums, amounting in the aggregate to the sum of one million one hundred and fifty-two thousand five hundred and forty-seven dollars and ninety-

eight cents, they, the said directors, were on the day last aforesaid liable to the said association as payers, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were not in and among the resources of said association at the close of the business of said association on the said thirtieth day of June, under the head "checks and other cash items," checks amounting to the sum of eighty-four thousand five hundred and eleven dollars and ninety-one cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he swore and made oath as aforesaid; and whereas, in truth and
in fact, there were in and among the resources of said association
15 at the close of the business of said association on the said thirtieth day of June, under the head of "Checks and other cash items," no checks, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were among the resources of said association at the close of the business of said association on the said thirtieth day of June checks and drafts upon which money had been by said association theretofore paid in excess of the moneys theretofore deposited with said association to the credit of the makers of such checks and drafts, which said excess was then in the aggregate five thousand three hundred and forty-seven dollars and forty cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, the surplus fund of said association at the close of the business of said association on said thirtieth day of June was not two hundred and forty-three thousand four hundred and sixty-two dollars and sixty-nine cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, at the close of the business of said
association on the said thirtieth day of June the said associa-
16 tion had no surplus fund, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, the amount of currency or deposits with and in said association at the close of the business of said association on said thirtieth day of June, known and designated by said association as "individual deposites subject to checks," was one million five hundred and forty-seven thousand five hundred and forty-eight dollars and seventy-one cents, as he, the said Edward P. Curtis, cashier as aforesaid well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there was at the close of the business of said association on the said thirtieth day of June due from said association to other national banks the sum of six hundred and twenty-two thousand three hundred and four dollars and eighty-eight cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid.

And so the jurors aforesaid, on their oaths aforesaid, do present that the said Edward P. Curtis, cashier of said association as aforesaid, on the eighteenth day of July, in the year of our Lord one thousand eight hundred and seventy-six, at said district, in and by his oath
and declaration to said report aforesaid, before the said John
17 M. Dickson as such notary as aforesaid, upon his oath aforesaid (he, the said John M. Dickson, then and there having and possessing lawful and competent power and authority to administer the said oath to him, the said Edward P. Curtis, cashier as aforesaid,) by his own act and consent and in form and manner aforesaid, did felo-

niously, knowingly, falsely, maliciously, wilfully, and corruptly commit wilful and corrupt perjury in and upon the said material points and things on said report, contrary to the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, on their oaths aforesaid, do further present that on the first day of January, in the year of our Lord one thousand eight hundred and seventy-six, and thence continuously to the nineteenth day of June, in the year of our Lord one thousand eight hundred andseventy-seven, the National Bank of the State of Missouri, in St. Louis, was a national banking association, theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and was during the period of time aforesaid acting
18 and carrying on the business of banking in the city of St. Louis, within said district, under the said act of Congress and the acts amendatory thereof; that on the tenth day of October, in the year of our Lord one thousand eight hundred and seventy-six, the Comptroller of the Currency of the United States made a certain request and requisition to and upon said association for a report from and by said association, to be made according to the form theretofore prescribed by him, the said Comptroller, exhibiting the resources and liabilities of said association at the close of the business of said association on a certain day, then past, specified by said Comptroller in said request and requisition, that is to say, at the close of the business of said association on the second day of October, in the year of our Lord one thousand eight hundred and seventy-six.

And the jurors aforesaid, on their oaths aforesaid, do further present that on the tenth day of October, in the year of our Lord one thousand eight hundred and seventy-six, the said association did prepare a certain report, according to the form theretofore prescribed by the Comptroller of the Currency, to be transmitted as required by law to said Comptroller, in compliance with the said request and requisition, which said report, so prepared as aforesaid, to be transmitted as aforesaid,
19 on said tenth day of October, purported to exhibit, according to the said form prescribed as aforesaid, in detail and under the appropriate heads, the resources and liabilities of said association at the close of the business of said association on the second day of October, in the year of our Lord one thousand eight hundred and seventy-six, and which said report, so prepared as aforesaid, did, on the said tenth day of October, indicate and declare in substance and effect, among other things, under the head of "loans and discounts" on said report, that at the close of business of said association on the said second day of October there were due and owing to said association, and included in the resources of said association as a portion of loans and discounts, no debts such as are defined by the provisions of section five thousand two hundred and four of the Revised Statutes of the United States to be bad debts, and which said report did, on said tenth day of October, indicate and declare in substance and effect, among other things, under the head "loans and discounts" on said report, that at the close of the business of said association on said second day of October the liabilities to said association of the directors of said association as payers were six hundred and ten thousand six hundred and twenty seven dollars and forty cents, and which said report, so prepared as

aforesaid, did, on the said tenth day of October, indicate
20 and declare in substance and effect, among other things, under the head "checks and other cash items" on said report, that at the close of the business of said association on the said second day of October there were in and among the resources of said association checks for the aggregate sum of sixty-seven thousand seven hundred and ninety-one dollars and eighty-eight cents, and which said report, so prepared as aforesaid, did, on the said tenth day of October, indicate and declare in substance and effect, among other things, under the head of "overdrafts" on said report, that at the close of the business of said association on the said second day of October there were among the resources of said association no checks or drafts upon which money had been by said association paid in excess of the moneys theretofore deposited with said association to the credit of the makers of said checks or drafts, and which said report, so prepared as aforesaid, did, on said tenth day of October, indicate and declare in substance and effect, among other things, as follows: That the surplus fund of said association at the close of the business of said association on the said second day of October was two hundred and forty-eight thousand seven hundred and seventy-five dollars and fifty-two cents; that the amount of currency or deposits with and in said association at
21 the close of the business of said association on the day last aforesaid, known and designated by said association as "individual deposits subject to check," was one million three hundred and forty-seven thousand four hundred and ninety-five dollars and ten cents; that the amount of money due from said association to other national banks was at the close of the business of said association on the day last aforesaid the sum of one hundred and eleven thousand nine hundred and fifty dollars and fifty-three cents, and which said report, so prepared as aforesaid, was, on said tenth day of October, required by said act of Congress first aforesaid to be verified by the oath or affirmation of the president or cashier of said association.

And the jurors aforesaid, on their oaths aforesaid, do further present that Edward P. Curtis, late of said district, on the said tenth day of October, in the year of our Lord one thousand eight hundred and seventy-six, at said district, being then and there the cashier of said association, wickedly and unlawfully contriving and intending to deceive the said Comptroller and the public and certain persons to said unknown, with respect to the true condition of the resources and liabilities of said association at the close of the business of the said association, on the said second day of October, in the year of our Lord one
22 thousand eight hundred and seventy-six, and wrongfully, wickedly, unlawfully contriving and intending to misrepresent to said Comptroller and to the public the true condition of the resources and liabilities of said association at the close of the business of said association on the said day last aforesaid, did produce and exhibit the said report so made as aforesaid for verification by the oath of him, the said Edward P. Curtis, cashier as aforesaid, to and before one John M. Dickson, then and there, that is, on the said tenth day of October, in the year of our Lord one thousand eight hundred and seventy six, at said district, a notary public within and for the county of St. Louis, within said district, and as such notary a person having competent authority to administer an oath to him, the said Edward P. Curtis, cashier as aforesaid, in the premises, which said report, so produced and exhibited to and before the said John M. Dickson, notary as aforesaid, had, on the day and year last aforesaid thereunder written, a certain declara-

tion, which said declaration was in substance and effect as follows: "I, Edw'd P. Curtis, of the National Bank of the State of Missouri, at St. Louis, do solemnly swear that the above statement is true to the best of my knowledge and belief," which said declaration was, on the day last aforesaid and at said district, subscribed by him; the said Edward P. Curtis, cashier as aforesaid, being on the day last aforesaid
23 and at said district, before and by the said John M. Dickson, notary as aforesaid, duly sworn, did on the day last aforesaid, and at said district, take his corporal oath concerning the truth of the said declaration subscribed by him as aforesaid, which said oath was on the day last aforesaid and at said district in a case in which a law of the United States, to wit, the act of Congress first aforesaid, authorized an oath to be administered as aforesaid; that it became and was on the day last aforesaid, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was sworn and took his corporal oath as aforesaid, material that the said Comptroller should receive and that the said report should exhibit a true and correct statement of the resources and liabilities of said association at the close of the business of said association on the said second day of October; that it became and was on the said tenth day of October at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report and that the said report should exhibit, among other things, the aggregate amount of debts defined by the provisions of section five thousand two hundred
24 and four of the Revised Statutes of the United States as bad debts due and owing to said association at the close of the business of said association on the said second day of October aforesaid, and included under the head of "loans and discounts" on said report; that it became and was on the said tenth day of October, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, the amount of the liabilities to said association of the directors of said association, as payers, existing at the close of the business of said association on the said second day of October; that it became and was on the said tenth day of October, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report and that the said report should exhibit, among other things, the nature and character of that portion of the resources of said association designated on said report as "checks and other cash items;" that it became and was on the said tenth day of October, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material
25 that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head "overdrafts" on said report, the amount of money remaining at the close of the business of said association on the said second day of October drawn and paid out of the moneys and funds of said association upon checks or drafts in excess of the moneys theretofore deposited with said association to the credit of the makers of such checks or drafts; that it became and was on the said tenth day of October, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, ma-

terial that the said Comptroller should know by means of said report and that the said report should exhibit among other things, under the head surplus fund on said report, the true amount of the moneys of said association actually belonging to the surplus fund of said association at the close of the business of said association on the said second day of October; that it became and was on the said tenth day of October, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should
26 know by means of said report and that the said report should exhibit, among other things, under the head "individual deposits subject to checks" on said report, among the liabilities of said association, the true aggregate amount of currency on deposit with said association subject to check at the close of the business of said association on the said second day of October; that it became and was on the said tenth day of October, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report should exhibit, among other things, the true aggregate amount of money due from said association at the close of the business of said association on the said second day of October to other national banks.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said Edward P. Curtis, cashier as aforesaid, being so sworn as aforesaid, wickedly and corruptly devising to suppress a full and true disclosure of the condition of the resources and liabilities of said association, did, on the said tenth day of October, at said district, and at the time he was so sworn and so took his corporal oath as aforesaid, in and by his said oath to said declaration before the said John M.
27 Dickson, notary as aforesaid, he, the said John M. Dickson, notary as aforesaid, being, on the said tenth day of October, and at said district, a person having competent authority to administer said oath to said declaration, in that behalf falsely, corruptly, knowingly, wilfully, maliciously, and wickedly state, declare, and swear in substance and to the effect following, that is to say: I, Edward P. Curtis (meaning Edward P. Curtis) of the National Bank of the State of Missouri at St. Louis (meaning the National Bank of the State of Missouri in St. Louis), do solemnly swear that the above statement (meaning the said report, so prepared by said association as aforesaid, and purporting to show the resources and liabilities of said association at the close of the business of said association on the said second day of October) is true to the best of my knowledge and belief (meaning to the best of the knowledge and belief of him, the said Edward P. Curtis, as cashier as aforesaid); which said report, so prepared by said association as aforesaid, and verified by the said oath and declaration as aforesaid, was afterwards, to wit, on said tenth day of October, attested by Barton Bates, Julius S. Walsh, and James H. Britton, directors of said association, and which said report was afterwards, to wit, on said 10th day of October, transmitted by said association to the said Comptroller.

28 Whereas, in truth and in fact, the said report so purporting as aforesaid to exhibit the resources and liabilities of the said association, at the close of the business of said association on the said second day of October was not, on the said tenth day of October, and at the time the said oath was taken, in all respects true, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he was sworn and took said oath and made the said declaration.

And whereas, in truth and in fact, the said report so produced as aforesaid to the said John M. Dickson, notary as aforesaid, and so purporting as aforesaid to be a true report of the resources and liabilities of said association at the close of the business of said association on the said second day of October was not, on the said tenth day of October, and at the time said oath was taken, true, in this, that at the close of the business of said association on the said second day of October there were due and owing to said association, and included in the resources of said association as a portion of loans and discounts, debts such as were then defined by section five thousand two hundred and four of the Revised Statutes of the United States to be bad debts, amounting to a large sum, to wit, the sum of nine hundred and thirty-nine thousand two hundred and fourteen dollars and twenty-nine
29 cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there was due to said association at the close of the business of said association on the said second day of October from one James B. Eads the sum of five hundred and fourteen thousand and seventy-two dollars and thirty-nine cents; from one James H. Britton the sum of three hundred and eighty-three thousand seven hundred and thirty-nine dollars and ten cents; from one Barton Bates the sum of two hundred and twenty-nine thousand six hundred and eighty-one dollars and forty-nine cents; and from one Julius S. Walsh the sum of twenty-five thousand dollars; they, the said Eads, Britton, Bates, and Walsh, being on the day last aforesaid directors of said association, for which said sums, amounting in the aggregate to the sum of one million one hundred and fifty-two thousand four hundred and ninety-two dollars and ninety-eight cents, they, the said directors, were on the day last aforesaid liable to the said association as payers, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were not in and among the resources
30 of said association at the close of the business of said association on the said second day of October, under the head of "checks and other cash items," checks *checks* amounting to the sum of sixty-seven thousand seven hundred and ninety-one dollars and eighty-eight cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were in and among the resources of said association at the close of the business of said association, on the said second day of October, under the head of "checks and other cash items," no checks, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were among the resources of said association at the close of the business of said association on the said second day of October "checks and drafts upon which money had been by said association theretofore paid in excess of the moneys theretofore deposited with said association to the credit of the makers of such checks and drafts, which said excess was then in the aggregate thirty-six thousand and seventy-nine dollars and twenty cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, the surplus fund of said association on said second day
31 of October was not two hundred and forty-eight thousand seven hundred and seventy-five dollars and fifty-two cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he

so swore and made oath as aforesaid; and whereas, in truth and in fact, at the close of the business of said association on the said second day of October the said association had no surplus fund, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, the amount of currency or deposits with and in said association at the close of the business of said association on said second day of October, known and designated by said association as "individual deposits subject to checks" was one million three hundred and eighty thousand three hundred and eighty-two dollars and forty-four cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there was at the close of the business of said association on the said second day of October due from said association to other national banks the sum of six hundred and eleven thousand nine hundred and fifty dollars and fifty-three cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as
32 aforesaid.

And so the jurors aforesaid, on their oaths aforesaid, do present that the said Edward P. Curtis, cashier of said association as aforesaid, on the tenth day of October, in the year of our Lord on' thousand eight hundred and seventy-six, at said district, in and by his oath and declaration to said report aforesaid, before the said John M. Dickson as such notary as aforesaid, upon his oath aforesaid (he, the said John M. Dickson, then and there having and possessing lawful and competent power and authority to administer the said oath to him, the said Edward P. Curtis, cashier as aforesaid; by his own act and consent, and in form and manner aforesaid did feloniously, knowingly, falsely, maliciously, wilfully, and corruptly commit wilful and corrupt perjury in and upon the said material points and things on said report, contrary to the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, on their oaths aforesaid, do further present that on the first day of January, in the year of our Lord one thousand eight hundred and seventy-six, and thence continuously to the nineteenth day of June, in the year of our Lord one thousand eight hundred and seventy-seven, the National
33 Bank of the State of Missouri, in St. Louis, was a national banking association theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and was during the period of time aforesaid acting and carrying on the business of banking in the city of St. Louis, within said district, under the said act of Congress and the acts amendatory thereof; that on fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, the Comptroller of the Currency of the United States made a certain request and requisition to and upon said association for a report from and by said association, to be made according to the form theretofore prescribed by him, the said Comptroller, exhibiting the resources and liabilities of said association at the close of the business of said association on a certain day, then passed, specified by said Comptroller in said request and requisition, that is to say, at the close of the business of said association on the twenty-second day of De-

cember, in the year of our Lord one thousand eight hundred and seventy six.

34 And the jurors aforesaid, on their oaths aforesaid, do further present that on the fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, the said association did prepare a certain report according to the form theretofore prescribed by the Comptroller of the Currency, to be transmitted, as required by law, to said Comptroller, in compliance with the said request and requisition, which said report, so prepared as aforesaid, to be transmitted as aforesaid on said fifteenth day of January, purported to exhibit, according to the said form prescribed as aforesaid, in detail and under the appropriate heads, the resources and liabilities of said association at the close of the business of said association on the twenty-second day of December, in the year of our Lord one thousand eight hundred and seventy-six, and which said report, so prepared as aforesaid, did, on the said fifteenth day of January, indicate and declare in substance and effect, among other things, under the head of "loans and discounts" on said report, that at the close of the business of said association on the twenty-second day of December there were due and owing to said association, and included in the resources of said association as a portion of loans and discounts, no debts such as are defined by the provision of section five thousand two hundred and four of the Revised Statutes

35 of the United States to be bad debts, and which said report did, on said fifteenth day of January, indicate and declare in substance and effect, among other things, under the head "loans and discounts" on said report, that at the close of the business of said association on said twenty-second day of December the liabilities to said association of the directors of said association, as payers, were six hundred and four thousand two hundred and ninety-two dollars and forty cents, and which said report, so prepared as aforesaid, did, on the said fifteenth day of January, indicate and declare in substance and effect, among other things, under the head "checks and other cash items" on said report, that at the close of the business of said association on the said twenty-second day of December there were in and among the resources of said association checks for the aggregate amount of sixty-seven thousand four hundred and forty dollars and sixty-eight cents, and which said report, so prepared as aforesaid, did, on the said fifteenth day of January, indicate and declare in substance and effect, among other things, under the head of "overdrafts" on said report, that at the close of the business of said association on the said twenty-second day of December there were among the resources of said association no checks or drafts upon which money had been by

36 said association paid in excess of the moneys theretofore deposited with said association to the credit of the makers of said checks or drafts, and which said report, so prepared as aforesaid, did, on said fifteenth day of January, indicate and declare in substance and effect, among other things, as follows: That the surplus fund of said association at the close of the business of said association on the said twenty-second day of December was two hundred and forty-eight thousand seven hundred and seventy-five dollars and fifty-two cents; that the amount of currency on deposit with and in said association at the close of the business of said association on the day last aforesaid, known and designated by the association as "individual deposits subject to check," was one million eight hundred and seventy-one thousand seven hundred and thirty-nine dollars and six cents; that the amount of money due from said association to other national banks was at the close

of the business of said association on the day last aforesaid the sum of one hundred and seventy-six thousand four hundred and twenty-three dollars and eighty cents, and which said report, so prepared as aforesaid, was, on said fifteenth day of January, required by said act of Congress first aforesaid to be verified by the oath or affirmation of the president or cashier of said association.

And the jurors aforesaid, on their oaths aforesaid, do further
37 present that Edward P. Curtis, late of said district, on the said fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, at said district, being then and there the cashier of said association, wickedly and unlawfully contriving and intending to deceive the said Comptroller and the public, and certain persons to said jurors unknown, with respect to the true condition of the resources and liabilities of said association at the close of the business of the said association on the said twenty-second day of December, in the year of our Lord one thousand eight hundred and seventy-six, and wrongfully, wickedly, and unlawfully contriving and intending to misrepresent to said Comptroller and to the public the true condition of the resources and liabilities of said association at the close of the business of said association on the said last day aforesaid, did produce and exhibit the said report, so made as aforesaid, for verification by the oath of him, the said Edward P. Curtis, cashier as aforesaid, to and before one John M. Dickson, then and there, that is, on the said fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, at said district, a notary
38 public within and for the county of St. Louis, within said district, and as such notary a person having competent authority to administer an oath to him, the said Edward P. Curtis, cashier as aforesaid in the premises, which said report, so produced and exhibited to and before the said John M. Dickson notary, as aforesaid, had, on the day and year last aforesaid, thereunder written a certain declaration, which said declaration was in substance and effect as follows: "I, Edw'd P. Curtis, cash'r of the National of the State of Missouri, in Saint Louis, do solemnly swear that the above statement is true to the best of my knowledge and belief," which said declaration was on the day last aforesaid, and at said district, subscribed by him, the said Edward P. Curtis, cashier as aforesaid that the said Edward P. Curtis, cashier as aforesaid, being on the day last aforesaid, and at said district, before and by the said John M. Dickson, notary as aforesaid, duly sworn, did on the day last aforesaid, and at said district, take his corporal oath concerning the truth of the said declaration subscribed by him as aforesaid, which said oath was, on the day last aforesaid, and at said district, in a case in which a law of the United States, to wit, the act of Congress first aforesaid, authorized an oath to be administered as aforesaid that it became, and was on the day last aforesaid,
39 at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was sworn and took his corporal oath as aforesaid, material that the said Company should receive and that the said report should exhibit a true and correct statement of the resources and liabilities of said association at the close of the business of said association on the said twenty-second day of December; that it became and was on the said fifteenth day of January, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report and that the said report should exhibit, among other things, the aggregate

amount of debts defined by the provisions of section five thousand two hundred and four of the Revised Statutes of the United States as bad debts, due and owing to said association, at the close of the business of said association on the said twenty-second day of December, aforesaid, and included under the head of "loans and discounts" on said report; that it became and was on the said fifteenth day of January at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn, and so took his corporal oath as aforesaid, material that the said Comptroller should know
40 by means of said report and that the said report should exhibit among other things, the amount of the liabilities to said association of the directors of said association, as payers, existing at the close of the business of said association on the said twenty-second day of December; that it became and was on the said fifteenth day of January at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report and that the said report should exhibit, among other things the nature and character of that portion of the resources of said association designated on said report as "checks and other cash items;" that it became and was on the said fifteenth day of January at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head "overdrafts" on said report, the amount of money remaining at the close of the business of said association on the said twenty-second day of December drawn and paid out of the moneys and funds of said association upon checks or drafts in excess of the moneys heretofore deposited with said
41 association to the credit of the makers of such checks or drafts; that it became and was on the said fifteenth day of January, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report, and that the said report should exhibit, among other things, under the head "surplus fund" on said report, the true amount of the moneys of said association actually belonging to the surplus fund of said association at the close of the business of said association on the said twenty-second day of December; that it became and was on the said fifteenth day of January, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn, and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head "individual deposits" subject to check on said report, among the liabilities of said association the true aggregate amount of currency on deposit with said association subject to check at the close of the business of said association on the said
42 twenty-second day of December; that it became and was on the said fifteenth day of January, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report and that the said report should exhibit, among other things, the true aggregate amount of money due from said association at the close of the business of said association on the said twenty-second day of December to other national banks.

And the jurors aforesaid, on their oaths aforesaid, do further present

that the said Edward P. Curtis, cashier as aforesaid, being so sworn as aforesaid, wickedly and corruptly devising to suppress a full and true disclosure of the condition of the resources and liabilities of said association, did, on the said fifteenth day of January, at said district, and at the time he so swore and so took his corporal oath as aforesaid, in and by his said oath to said declaration before the said John M. Dickson, notary as aforesaid, he, the said John M. Dickson, notary as aforesaid, being on the said fifteenth day of January, and at said district, a person having competent authority to administer said oath to said declaration, in that behalf falsely, corruptly, knowingly, wilfully, maliciously, and wickedly state, declare, and swear in substance and to the effect following, that is to say: I, Edw'd P. Curtis (meaning
43 the said Edward P. Curtis), cash'r (meaning cashier of the National of the State of Missouri, in Saint Louis (meaning the National Bank of the State of Missouri, in Saint Louis), do solemnly swear that the above statement (meaning the said report so prepared by said association as aforesaid and purporting to show the resources and liabilities of said association at the close of the business of said association on the said twenty-second day of December) is true to the best of my knowledge and belief (meaning to the best of my knowledge and belief of him, the said Edward P. Curtis, as cashier as aforesaid); which said report, so prepared by said association as aforesaid, and verified by the said oath and declaration as aforesaid, was afterwards, to wit, on said fifteenth day of January, attested by Barton Bates, Julius S. Walsh, and James H. Britton, directors of said association, and which said report was afterwards, to wit, on said fifteenth day of January, transmitted by said association to the said Comptroller.

Whereas, in truth and in fact, the said report so purporting, as aforesaid to exhibit the resources and liabilities of the said association at the close of the business of said association on the said twenty-second day of December was not, on the said fifteenth day of January, and at the time the said oath was taken, in all respects true, as he, the
44 said Edward P. Curtis, cashier as aforesaid, well knew, at the time he was sworn and took said oath and made the said declaration as aforesaid.

And whereas, in truth and in fact, the said report so produced as aforesaid to the said John M. Dickson, notary as aforesaid, and so purporting as aforesaid to be a true report of the resources and liabilities of said association at the close of the business of said association on the said twenty-second day of December was not, on the said fifteenth day of January, and at the time said oath was taken, true, in this, that at the close of the business of said association on the said twenty-second day of December there were due and owing to said association, and included in the resources of said association as a portion of loans and discounts, debts such as were then defined by section five thousand two hundred and four of the Revised Statutes of the United States to be bad debts, amounting to a large sum, to wit, the sum of nine hundred and thirty-four thousand five hundred and seventy-nine dollars and twenty-nine cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas in truth, and in fact, there was due to said association at the close of the business of said association on the said twenty-second day of December from one James B. Eads the sum of five hundred
45 and fourteen thousand and seventy-two dollars and thirty-nine cents; from one James H. Britton the sum of three hundred and eighty-two thousand and thirty-nine dollars and ten cents; from one

Barton Bates the sum of two hundred and twenty-nine thousand six hundred and eighty-one dollars and forty-nine cents; and from one Julius S. Walsh the sum of twenty-five thousand dollars, they, the said Eads, Britton, Bates, and Walsh, being on the day last aforesaid, directors of said association, for which said sums, amounting in the aggregate to the sum of one million one hundred and fifty thousand seven hundred and ninety-two dollars and ninety-eight cents, they, the said directors, were, on the day last aforesaid, liable to the said association as payers, as he the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were not in and among the resources of said association at the close of the business of said associa ion on the said twenty-second day of December, under the head "checks and other cash items," checks amounting to the sum of sixty-seven thousand four hundred and forty *thousand* dollars and sixty-eight cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were in and among the resources of
46 said association at the close of the business of said association on the said twenty-second day of December, under the head of "checks and other cash items," no checks, as he, the said Edward P. Curtis, cashier as aforesaid; well knew at the time he so swore and made oath as aforesaid, and whereas, in truth and in fact, there were among the resources of said association at the close of the business of said association on the said twenty-second day of December checks and drafts upon which money had been by said association theretofore paid in excess of the moneys theretofore deposited with said association to the credit of the makers of such checks and drafts, which said excess was then in the aggrigate fifty-two thousand five hundred and sixty-eight dollars and twenty cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, the surplus fund of said association at the close of the business of said association on said twenty-second day of December was not two hundred and forty-eight thousand seven hundred and seventy-five dollars and fifty-two cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, at the close of the business of said association on the said twenty-second day of December the said association had no surplus
47 fund, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, the amount of currency or deposit with and in said association at the close of the business of said association on said twenty-second day of December, known and designated by said association as "individnal deposits subject to check," was one million nine hundred and twenty-thousand one hundred and two dollars and sixteen cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there was at the close of the business of said association on the said twenty-second day of December due from said association to other national banks the sum of five hundred and seventy-six thousand four hundred and twenty-three dollars and eighty cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid.

And so the jurors aforesaid, on their oaths aforesaid, do present that

the said Edward P. Curtis, cashier of said association as aforesaid, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, at said district, in and by his oath and declaration to said report aforesaid, before the said John M. Dick-
48 son, as such notary as aforesaid, upon his oath aforesaid (he, the said John M. Dickson, then and there having and possessing lawful and competent power and authority to administer the said oath to him, the said Edward P. Curtis, cashier as aforesaid), by his own act and consent, and in form and manner aforesaid, did feloniously, knowingly falsely, maliciously, wilfully and corruptly, commit wilful and corrupt perjury in and upon the said material points and things in said report, contrary to the form of the statute of the United States in such case made and provided, and against their peace and dignity.

And the jurors aforesaid, on their oaths aforesaid, do further present that on the first day of January, in the year of our Lord one thousand eight hundred and seventy-six, and thence continuously to the nineteenth day of June, in the year of our Lord one thousand eight hundred and seventy-seven, "the National Bank of the State of Missouri, in St. Louis, was a national banking association theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of the United States bonds, and to provide for the circulation and redemption thereof," approved June third, in the year of our Lord one thousand eight hundred and sixty-four, and was during the period of time aforesaid acting and carrying on the business of banking in the city of St.
49 Louis, within said district, under the said act of Congress and the acts amendatory thereof; that on the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, the Comptroller of the Currency of the United States made a certain request and requisition to and upon said association for a report from and by said association, to be made according to the form theretofore prescribed by him, the said Comptroller, exhibiting the resources and liabilities of said association at the close of the business of said association on a certain day, then passed, specified by said Comptroller in said request and requisition, that is to say, at the close of the business of said association, on the twentieth day of January, in the year of our Lord one thousand eight hundred and seventy seven.

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, the said association did prepare a certain report according to the form theretofore prescribed by the Comptroller of the Currency to be transmitted, as required by law, to said Comptroller, in compliance with the said request and requisition, which said report, so prepared as aforesaid, to be transmitted as aforesaid on said twenty-sixth day of January, purported to exhibit, according to the said form prescribed as
50 aforesaid, in detail and under the appropriate heads, the resources and liabilities of said association at the close of the business of said association on the twentieth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and which said report, so prepared as aforesaid, did, on the said twenty-sixth day of January, indicate and declare in substance and effect, among other things, under the head of "loans and discounts" on said report, that at the close of the business of said association on the said twentieth day of January there were due and owing to said association, and included in the resources of said association as a portion of loans and discounts, no

debts such as are defined by the provisions of section five thousand two hundred and four of the Revised Statutes of the United States to be bad debts, and which said report did on said twenty-sixth day of January indicate and declare in substance and effect, among other things, under the head of loans and discounts on said report, that at the close of the business of said association on said twentieth day of January the liabilities to said association of the directors of said association, as payers, were six hundred and four thousand two hundred and ninety-two dollars and forty cents, and which said report so prepared as aforesaid, did on the said twenty-sixth day of January, indicate and
51 declare in substance and effect, among other things, under the head of checks and other cash items on said report, that at the close of the business of said association on the said twentieth day of January there were in and among the resources of said association checks for the aggregate sum of one hundred and forty-one thousand one hundred and thirty-six dollars and ninety-nine cents, and which said report, so prepared as aforesaid, did, on the said twenty-sixth day of January, indicate and declare in substance and effect, among other things, under the head of "overdrafts" on said report, that at the close of the business of said association on the said twentieth day of January there were, among the resources of said association no checks or drafts upon which money had been by said association paid in excess of the moneys theretofore deposited with said association to the credit of the makers of said checks or drafts, and which said report, so prepared as aforesaid, did, on said twenty-sixth day of January, indicate and declare in substance and effect, among other things, as follows: That the surplus fund of said association at the close of the business of said association on the said twentieth day of January was two hundred and forty-eight thousand seven hundred and seventy-five dollars and fifty-two cents; that the amount of currency on deposit with and in
52 said association at the close of the business of said association on the day last aforesaid, known and designated by said association as "individual deposits subject to checks," was one million one hundred and ninety-seven thousand six hundred and seventy-three dollars and twenty-six cents; that the amount of money due from said association to other national banks was at the close of business of said association on the day last aforesaid the sum of one hundred and twenty-eight thousand five hundred and seventy-three dollars and fifty-two cents, and which said report, so prepared as aforesaid, was, on said twenty-sixth day of January, required by said act of Congress first aforesaid to be verified by the oath or affirmation of the president or cashier of said association.

And the jurors aforesaid, on their oaths aforesaid, do further present that Edward P. Curtis, late of said district, on the said twenty-sixth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, at said district, being then and there the cashier of said association, wickedly and unlawfully contriving and intending to deceive the said Comptroller and the public, and certain persons to said jurors unknown, with respect to the true condition of the resources and liabilities of said association at the close of the business of said association on the said twentieth day of January in the year of
53 our Lord one thousand eight hundred and seventy-seven, and wrongfully, wickedly, and unlawfully contriving and intending to misrepresent to said Comptroller and the public the true condition of the resources and liabilities of said association at the close of the business of said association on the said day last aforesaid, did produce

and exhibit the said report, so made as aforesaid, for verification by the oath of him, the said Edward P. Curtis, cashier as aforesaid, to and before one John M. Dickson, then and there, that is, on the said twenty-sixth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, at said district, a notary public within and for the county of St. Louis, within said district, and as such notary a person having competent authority to administer an oath to him, the said Edward P. Curtis, cashier as aforesaid, in the premises, which said report so produced and exhibited to and before the said John M. Dickson, notary as aforesaid, had, on the day and year last aforesaid, thereunder written a certain declaration, which said declaration was in substance and effect as follows: "I, Edw'd P. Curtis (meaning Edward P. Curtis), cash'r (meaning cashier), of the National Bank of the State of Missouri, in St. Louis, do solemnly swear that the above statement is true to the best of my knowledge and belief,"
54 which said declaration was on the day last aforesaid, and at said district, subscribed by him, the said Edward P. Curtis, cashier as aforesaid; that the said Edward P. Curtis, cashier as aforesaid, being, on the day last aforesaid and at said district, before and by the said John M. Dickson, notary as aforesaid, duly sworn, did on the day last aforesaid, and at said district, take his corporal oath concerning the truth of the said declaration subscribed by him as aforesaid, which said oath was on the day last aforesaid, and at said district, in a case in which a law of the United States, to wit, the act of Congress first aforesaid, authorized an oath to be administered as aforesaid; that it became and was on the day last aforesaid, at said district, and at the time the said Edward P. Curtis as aforesaid was sworn and took his corporal oath as aforesaid, material that the said Comptroller should receive and that the said report should exhibit a true and correct statement of the resources and liabilities of said association at the close of the business of said association on the said twenty-sixth day of January; that it became and was on the said twenty-sixth day of January, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report and
55 that the said report should exhibit, among other things, the aggregate amount of debts defined by the provisions of section five thousand two hundred and four of the Revised Statutes of the United States as bad debts due and owing to said association at the close of the business of said association on the said twentieth day of January aforesaid, and included under the head of loans and discounts on said report; that it became and was on the twenty-sixth day of January, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid was so sworn and *and* so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and the said report should exhibit, among other things, the amount of the liabilit iesto said association of the directors of said association, as payers, existing at the close of the business of said association on the said twentieth day of January that it became and was on the said twenty-sixth day of January at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things,
the nature and character of that portion of the resources
56 of said association designated on said report as "checks and other cash items" that it became and was on the said twenty-sixth day

of January, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and took his corporal oath as aforesaid, material, that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head "overdrafts" on said report, the amount of money remaining at the close of the business of said association on the said twentieth day of January drawn and paid out of the moneys and funds of said association upon checks or drafts in excess of the moneys theretofore deposited with said association to the credit of the makers of such checks or drafts; that it became and was on the twenty-sixth day of January, at said district, and at the time, the said Edward P. Curtis, cashier as, aforesaid, was so sworn and so took his corporal oath as aforesaid material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head "surplus fund" on said report, the true amount of moneys of said association actually belonging to the surplus fund of said association at the close of the business of said association on the said
57 twentieth day of January that it became and was on the said twenty-sixth day of January at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head "individual deposits subject to check" on said report, among the liabilities of said association, the true aggregate amount of currency on deposit with said association subject to check at the close of business of said association on the twentieth day of January; that it became and was on the said twenty-sixth day of January, at said district, and at the time Edward P. Curtis, cashier as aforesaid, was so sworn and took his corporal oath as aforesaid, material that the said Company should know by means of said report and that the said report should exhibit, among other things, the true aggregate amount of money due from said association at the close of the business of said association on the said twentieth day of January to other national banks.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said Edward P. Curtis, cashier as aforesaid, wickedly and corruptly devising to suppress a full and true disclosure of the con-
58 dition of the resources and liabilities of said association, on the said twenty-sixth day of January, at said district, and at the time he so swore and so took his corporal oath as aforesaid, in and by his said oath to said declaration, before the said John M. Dickson, notary as aforesaid, he, the said John M. Dickson, notary as aforesaid, being on the twenty-sixth of January, and at said district, a person having competent authroity to administer said oath to said declaration in that behalf, falsely, corruptly, knowingly, wilfully, maliciously, and wickedly state, declare, and swear, in substance and to the effect following, that is to say: I, Edw'd P. Curtis (meaning Edward P. Curtis), cashier of the National Bank of the State of Missouri, in St. Louis, do solomly swear that the above statement (meaning the said report, so prepared by said association as aforesaid, and purporting to show the resources and liabilities of said association at the close of the business of said association on the said twentieth day of January) is true, to the best of my knowledge and belief (meaning to the best of the knowledge and belief of him, the said Edward P. Curtis, as cashier as aforesaid), which said report, so prepared by said association as aforesaid, and verified by the said oath and declaration as aforesaid, was

afterwards, to wit, on the said twenty-sixth day of January, attested by Barton Bates, Julius S. Walsh, and James H. Britton, directors
59 of said association, and which said report was afterwards, to wit, on said twenty-sixth day of January, transmitted by said association to the said Comptroller.

Whereas, in truth and in fact, the said report, so purporting as aforesaid to exhibit the resources and liabilities of said association at the close of the business of said association on the said twentieth day of January, was not on the said twenty-sixth day of January, and at the time the said oath was taken, in all respects true, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he was so sworn and took said oath and made the said declaration aforesaid; and whereas, in truth and in fact, the said report, so produced as aforesaid to the said John M. Dickson, notary as aforesaid, and so purporting as aforesaid to be a true report of the resources and liabilities of said association at the close of the business of said association on the said twentieth day of January, was not, on the said twenty-sixth day of January, and at the time the said oath was taken as aforesaid, true, in this, that at the close of the business of said association on the said twentieth day of January there was due and owing to said association, and included in the resources of said association as a portion of loans and discounts, debts such as
60 were then defined by section five thousand two hundred and four of the Revised Statutes of the United States to be bad debts, amounting to a large sum, to wit, nine hundred and ninety-four thousand five hundred and seventy-nine dollars and twenty-nine cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there was due to said association, at the close of the business of said association on the said twentieth day of January from one James B. Eads the sum of five hundred and fourteen thousand and seventy-two dollars and thirty-nine cents; from one James H. Britton the sum of three hundred and eighty-eight thousand one hundred and sixty-four dollars and twenty-six cents; from one Barton Bates the sum of two hundred and twenty-nine thousand six hundred and eighty-one dollars and forty-nine cents; and from one Julius S. Walsh the sum of twenty-five thousand dollars, they, the said Eads, Britton, Bates, and Walsh, being on the day last aforesaid directors of said association, for which said sums, amounting in the aggregate to the sum of one million one hundred and fifty-six thousand nine hundred and eighteen dollars and fourteen cents, they, the said directors, were on the day last aforesaid liable to the said association as payers, so he, the said Edward P. Curtis, cashier as aforesaid, well knew
61 at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were not in and among the resources of said association at the close of the business of said association on the said twentieth day of January, under the "checks and other cash items," checks amounting to the sum of one hundred and forty-one thousand one hundred and thirty-six dollars and ninety-nine cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were in and among the resources of said association at the close of the business of said association on the said twentieth day of January, under the head of "checks and other cash items," no checks, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas,

in truth and in fact, there were among the resources of said association at the close of the business of said association on the said twentieth day of January checks and drafts upon which money had been by said association theretofore paid in excess of the moneys theretofore *paid in excess of the moneys theretofore* deposited with said association to the credit of the makers of such checks and drafts, which said excess was the i in the aggregate seventy-six thousand eight hundred and thirty-

62 seven dollars and seventy-six cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, the surplus fund of said association at the close of the business of said association on said twentieth day of January was not two hundred and forty-eight thousand seven hundred and seventy-five dollars and fifty-two cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, at the close of the business of said association on the said twentieth day of January the said association had no surplus fund, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, the amount of currency on deposit with and in said association at the close of the business of said association on said twentieth day of January, known and designated by said association as "individual deposits subject to checks," was one million two hundred and sixty-four thousand one hundred and seventy-six dollars and fourteen cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at

63 the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there was at the close of the business of said association on the said twentieth day of January due from said association to other national banks the sum of five hundred and eighty thousand five hundred and seventy-three dollars and fifty-two cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid.

And so the jurors aforesaid, on their oaths aforesaid, do present that the said Edward P. Curtis, cashier of said association as aforesaid, on the twenty-sixth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, at said district, in and by his oath and declaration to said report aforesaid, before the said John M. Dickson, as such notary as aforesaid, upon his oath aforesaid (he, the said John M. Dickson, then and there having and possessing lawful and competent power and authority to administer the said oath to him, the said Edward P. Curtis, cashier as aforesaid), by his own act and consent and in form and manner aforesaid, did feloniously, knowingly, falsely, maliciously, wilfully, and corruptly commit wilful and corrupt perjury, in and upon the said material points and things in said report, contrary to the form of the statute of the United States in such case made and provided, and against their peace and dignity.

64 And the jurors aforesaid, on their oaths aforesaid, do further present that on the first day of January, in the year of our Lord one thousand eight hundred and seventy-six, and thence continuously to the nineteenth day of June, in the year of our Lord one thousand eight hundred and seventy-seven, the National Bank of the State of Missouri, in St. Louis, was a nationai banking association, theretofore created and organized under and by virtue of an act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof", approved June third, in the year of our Lord one thousand

eight hundred and sixty-four, and was during the period of time aforesaid acting and carrying on the business of banking in the city of St. Louis, within said district, under the said act of Congress and the acts amendatory thereof; that on the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-seven, the Comptroller of the Currency of the United States made a certain request and requisition to and upon said association for a report from and by said association, to be made according to the form theretofore prescribed by him, the said Comptroller, exhibiting the resources and liabilities of said association at the close of the business of said association on a certain day, then passed, specified by said comptroller in said request
65 and requisition, that is to say, at the close of the business of said association on the fourteenth day of April, in the year of our Lord one thousand eight hundred and seventy-seven.

And the jurors aforesaid, on their oaths aforesaid, do further present that afterwards, to wit, on the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-seven, the said association did prepare a certain report, according to the form theretofore prescribed by the Comptroller of the Currency, to be transmitted, as required by law, to said Comptroller, in compliance with the said request and requisition, which said report, so prepared as aforesaid, to be transmitted as aforesaid on said twenty-fifth day of April, purported to exhibit, according to the said form prescribed as aforesaid, in detail and under the appropriate heads, the resources and liabilities of said association on the fourteenth day of April, in the year of our Lord one thousand eight hundred and seventy-seven; and which said report, so prepared as aforesaid, did, on the said twenty-fifth day of April, indicate and declare in substance and effect, among other things, under the head of "loans and discounts" on said report, that at the close of the business of said association on the said fourteenth day of April there were due and owing to said association and included in the resources
66 of said association as a portion of loans and discounts, no debts such as are defined by the provisions of section five thousand two hundred and four of the Revised Statutes of the United States to be bad debts; and which said report did, on said twenty-fifth day of April, indicate and declare in substance and effect, among other things, under the head of loans and discounts on said report, that at the close of the business of said association on said fourteenth day of April the liabilities to said association of the directors of said association, as payers, were six hundred and seventy-four thousand one hundred and fifty-five dollars and sixty-four cents; and which said report, so prepared as aforesaid, did, on the said twenty-fifth day of April, indicate and declare in substance and effect, among other things, under the head of "checks and other cash items" on said report, that at the close of the business of said association on the said fourteenth day of April there were in and among the resources of said association checks for the aggregate sum of forty-eight thousand six hundred and seventy-two dollars and seventy-six cents; and which said report, so prepared as aforesaid, did, on the said twenty-fifth day of April, indicate and declare in substance and effect, among other things, under the head of "over-
67 drafts" on said report, that at the close of the business of said association on the said fourteenth day of April there were among the resources of said association no checks or drafts upon which money had been by said association paid in excess of the moneys theretofore deposited with said association to the credit of the makers of said checks or drafts; and which said report, so prepared as aforesaid, did, on said

twenty-fifth day of April, indicate and declare in substance and effect, among other things, as follows: That the "surplus fund" of said association at the close of the business of said association on the said fourteenth day of April was two hundred and forty-eight thousand seven hundred and seventy-five dollars and fifty-two cents; that the amount of currency on deposit with and in said association at the close of the business of said association on the day last aforesaid, known and designated by said association as "individual deposits subject to check," was eight hundred and fifty-eight thousand nine hundred and twenty-seven dollars and eighteen cents; that the amount of money due from said association to other national banks was at the close of the business of said association on the day last aforesaid the sum of eighty thousand nine hundred and fourteen dollars and sixty cents; and which said report, so prepared as aforesaid, was, on said twenty-fifth day of
68 April, required by said act of Congress first aforesaid to be verified by the oath or affirmation of the president or cashier of said association.

And the jurors aforesaid, on their oaths aforesaid, do further present that Edward P. Curtis, late of said district, on the said twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-seven, at said district, being then and there the cashier of said association, wickedly and unlawfully, contriving and intending to deceive the said Comptroller, and the public, and certain persons to said jurors unknown, with respect to the true condition of the resources and liabilities of said association at the close of the business of said association on the said fourteenth day of April, in the year of our Lord one thousand eight hundred and seventy-seven, and wrongfully, wickedly, and unlawfully contriving and intending to misrepresent to said Comptroller and the public the true condition of the resources and liabilities of said association at the close of the business of said association on the said day last aforesaid, did produce and exhibit the said report, so made as aforesaid, for verification by the oath of him, the said Edward P. Curtis, cashier as aforesaid, to and before one John M. Dickson, then and there, that is, on the said twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-
69 seven, at said district, a notary public within and for the county of St. Louis, within said district, and as such notary a person having competent authority to administer an oath to him, the said Edward P. Curtis, cashier as aforesaid, in the premises, which said report so produced and exhibited to and before the said John M. Dickson, notary as aforesaid, had on the day and year last aforesaid thereunder written a certain declaration, which said declaration was in substance and effect as follows: "I, Edw'd P. Curtis (meaning Edward P. Curtis), cash'r (meaning cashier of the National Bank of the State of Missouri, in St. Louis, do solemnly swear that the above statement is true to the best of my knowledge and belief," which said declaration was on the day last aforesaid, and at said district, subscribed by him, the said Edward P. Curtis, cashier as aforesaid; that the said Edward P. Curtis, cashier as aforesaid, being on the day last aforesaid, and at said district, before and by the said John M. Dickson, notary as aforesaid, duly sworn, did, on the day last aforesaid, and at said district, take his corporal oath concerning the truth of the said declaration subscribed by him as aforesaid, which said oath was on the day last aforesaid, and at said district, in a case in which a law of the United States, to wit, he act of Congress first aforesaid, authorized an oath
70 to be administered as aforesaid; that it became and was on

the day last aforesaid, at said district, and at the time the said Edward P. Curtis cashier, as aforesaid, was sworn and took his corporal oath as aforesaid, material that the said Comptroller should receive and that the said report should exhibit a true and correct statement of the resources and liabilities of said association at the close of the business of said association on the said fourteenth day of April; that it became and was on the said twenty-fifth day of April at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report and that the said report should exhibit, among other things, the aggregate amount of debts defined by the provisions of section five thousand two hundred and four of the Revised Statutes of the United States as bad debts due and owing to said association at the close of the business of said association on the said fourteenth day of April aforesaid, and included under the head of "loans and discounts" on said report; that it became and was on the said twenty fifth day of of April, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid,
71 material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, the amount of the liabilities to said association of the directors of said association, as payers, existing at the close of the business of said association on the said fourteenth day of April; that it became and was on the said twenty-fifth day of April, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, the nature and character of that portion of the resources of said association designated on said report as "checks and other cash items;" that it became and was on the said twenty-fifth day of April at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head of "overdrafts" on said report,
the amount of money remaining at the close of the business of
72 said association on the said fourteenth day of April drawn and paid out of the moneys and funds of said association upon checks or drafts in excess of the moneys theretofore deposited with said association to the credit of the makers of such checks or drafts; that it became and was on the said twenty-fifth day of April, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head of "surplus fund" on said report, the true amount of the moneys of said association actually belonging to the surplus fund of said association at the close of the business of said association on the said fourteenth day of April; that it became and was on the said twenty-fifth day of April, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of said report and that the said report should exhibit, among other things, under the head "individual deposits subject to check"
73 on said report, among the liabilities of said association, the true

aggregate amount of currency on deposit with said association subject to check at the close of the business of said association on the said fourteenth day of April; that it became and was on the said twenty-fifth day of April, at said district, and at the time the said Edward P. Curtis, cashier as aforesaid, was so sworn and so took his corporal oath as aforesaid, material that the said Comptroller should know by means of the said report and that the said report should exhibit, among other things, a true aggregate amount of money due from said association at the close of the business of said association on the said fourteenth day of April to other national banks.

And the jurors aforesaid, on their oaths aforesaid, do further present that the said Edward P. Curtis, cashier as aforesaid, being so sworn as aforesaid, wickedly and corruptly devising to suppress a full and true disclosure of the condition of the resources and liabilities of said association, did, on the said twenty-fifth day of April, at said district, and at the time he so swore and so took his corporal oath as aforesaid, in and by his said oath to said declaration before the said John M. Dickson, notary as aforesaid, being on the said twenty-fifth day of
74 April, and at said district, a person having competent authority to administer said oath to said declaration in that behalf, falsely, corruptly, knowingly, wilfully, maliciously, and wickedly state, declare, and swear in substance and to the effect following, that is to say: I, Edw'd P. Curtis (meaning Edward P. Curtis), cashier of the National Bank of the State of Missouri, in St. Louis, do solom'ly swear that the above statement, (meaning the said report so prepared by said association as aforesaid, and purporting to show the resources and liabilities of said association at the close of the business of said association on the said fourteenth day of April,) is true to the best of my knowledge and belief (meaning to the best of the knowledge and belief of him, the said Edw'd P. Curtis, as cashier as aforesaid), which said report so prepared by said association as aforesaid, and verified by the said oath and declaration as aforesaid, was afterward, to wit, on said twenty-fifth day of April, attested by Barton Bates, Julius S. Walsh, and James B. Eads, directors of said association, and which said report was afterward, to wit, on said twenty-fifth day of April, transmitted by said association to the said Comptroller.

Whereas, in truth and in fact, the said report so purporting, as aforesaid, to exhibit the resources and liabilities of the said associa-
75 tion at the close of the business of said association on the said fourteenth day of April, was not on the said twenty-fifth day of April, and at the time the said oath was taken, in all respects true, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he was sworn and took said oath and made the said declaration as aforesaid.

And whereas, in truth and in fact, the said report so produced as aforesaid to the said John M. Dickson, notary as aforesaid, and so purporting as aforesaid to be a true report of the resources and liabilities of said association at the close of the business of said association on the said fourteenth day of April, was not on the said twenty-fifth day of April, and at the time the said oath was taken, true, in this, that at the close of the business of said association on the said fourteenth day of April there were due and owing to said association, and included in the resources of said association as a portion of loans and discounts, debts such as were then defined by section five thousand two hundred and four of the Revised Statutes of the United States to be bad debts, amounting to a large sum, to wit, the sum of five hundred and fifty-one thou-

sand five hund. and thirty-three dollars and seventeen cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the
76 time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there was due to said association at the close of the business of said association on the said fourteenth day of April from one James B. Eads the sum of five hundred and fourteen thousand and seventy-two dollars and thirty-nine cents, from one James H. Britton the sum of four hundred and eight thousand nine hundred and ninety-nine dollars and twenty six cents, from one Barton Bates the sum of two hundred and fourty thousand six hundred and eighty-one dollars and forty-nine cents, and from one Julius S. Walsh the sum of nineteen thousand dollars, they, the said Eads, Britton, Bates, and Walsh, being on the day last aforesaid directors of said association, for which said sum, amounting in the aggregate to the sum of one million one hundred and eighty-two thousand seven hundred and fifty-three dollars and fourteen cents, they, the said directors, were on the day last aforesaid liable to the said association as payers, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were not in and among the resources of said association at the close of the business of said association on the said fourteenth day of April, under the
77 head "checks and other cash items," checks amounting to the sum of forty eight thousand six hundred and seventy-two dollars and seventy-six cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were in and among the resources of said association at the close of the business of said association on the said fourteenth day of April, under the head of "checks and other cash items," no checks, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there were among the resources of said association at the close of the business of said association on the said fourteenth day of April checks and drafts upon which money had been by said association theretofore paid in excess of the moneys theretofore deposited with said association to the credit of the makers of such checks and drafts, which said excess was then in the aggregate one hundred and twenty-five thousand and ninety-two dollars and thirty cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, the surplus fund of said association at the close of the business of said association on said fourteenth day of April was not two hundred and forty-eight thousand seven hundred and seventy-five dollars and fifty-two cents, as he, the said Edward P.
78 Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, at the close of the business of said association on the said fourteenth day of April the said association had no "surplus fund," as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, the amount of currency on deposit with and in said association at the close of the business of said association on said fourteenth day of April, known and designated by said association as "individual deposits subject to check," was eight hundred and ninety-three thousand nine hundred and sixty-seven dollars and seventy-one cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid; and whereas, in truth and in fact, there was at the close of the business

of said association on the said fourteenth day of April due from said association to other national banks the sum of five hundred and seventy-seven thousand and ninety-three dollars and thirty-one cents, as he, the said Edward P. Curtis, cashier as aforesaid, well knew at the time he so swore and made oath as aforesaid.

And as the jurors aforesaid, on their oaths aforesaid, do present that the said Edward P. Curtis, cashier of said association as afore-
79 said, on the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-seven, at said district, in and by his oath and declaration to said report as aforesaid, before the said John M. Dickson, as such notary as aforesaid, upon his oath aforesaid (he, the said John M. Dickson, then and there having and possessing lawful and competent power and authority to administer the said oath to him, the said Edward P. Curtis, cashier as aforesaid), by his own act and consent, and in form and manner as aforesaid, did feloniously, knowingly, falsely, maliciously, wilfully, and corruptly commit wilful and corrupt perjury in and upon the said material points and things in said report, contrary to the form of the statute of the United States in such case made and provided, and against their peace and dignity.

WILLIAM H. BLISS,
Attorney of the United States for the Eastern District of Missouri.

And afterwards, at a regular stated term of the district court of the United States in and for the eastern district of Missouri, begun and holden at the city of St. Louis, in said eastern district, on the first Monday, the fifth day, of May, A. D. eighteen hundred and seventy-nine, the following proceedings were had of record in this case on Monday, the sixteenth day of June, A. D. 1879, to wit:

80 *Plea of not guilty.*

THE UNITED STATES, PLAINTIFF, *ag'st* EDWARD P. CURTIS, DEFENDANT. } Indictment for perjury.

This day comes the United States, by district attorney, and also comes the said defendant herein, by John B. Henderson and Chester H. Krum, esquires, his attorneys, and the said defendant, by his said attorneys, enters his appearance in this cause, and also enters his plea of not guilty to the charges as contained in said indictment herein against him.

And on the motion of the district attorney, it is ordered that the indictment pending in this court in the above-entitled cause be, and hereby is, now remitted and transferred to the next regular stated term and session of the circuit court of the United States in and for the eastern district of Missouri, to be begun and holden at the city of St. Louis, in said eastern district, on the third Monday, the fifteenth day, of the month of September next (1879), for proceedings thereon according to law. And it is further ordered that the clerks of this court make out and certify to the said circuit court a full, true, and complete transcript of the record and proceedings in the said cause.

81 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Joseph H. Clark, clerk of the district court of the United States

in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to be a true transcript of the record and proceedings in case No. 1591, A. D. 1879, of the United States, plaintiff, against Edward P. Curtis, defendant, as fully as the same remains on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this 18th day of August, in the year of our Lord eighteen hundred and seventy-nine.

(S'g'd) JOSEPH H. CLARK,
Clerk of said Court.

82 And afterwards, to wit, on the 29th day of January, 1880, the following demurrer was filed in said cause, to wit:

Demurrer.

In the circuit court of the United States for the eastern district of Missouri. No. 1532.

THE UNITED STATES
vs.
EDWARD P. CURTIS.

The defendant now comes and shows the court here that the said foregoing indictment, and each and every count thereof, is insufficient in law, and that he is not bound to answer or plead to the same.

Therefore he asks judgment, &c.

JOHN B. HENDERSON,
CHESTER H. KRUM,
For Defendant.

And afterwards, to wit, on the 10th day of March, 1880, the following proceedings were had and appear of record in said cause, to wit:

THE UNITED STATES, PLAINTIFF,
vs.
EDWARD P. CURTIS, DEFENDANT.

83 Now at this day comes the United States by William H. Bliss, esquire, district attorney, and the defendant being in court in compliance with his recognizance herein, and by his attorneys, this cause come on for hearing upon the demurrer of said defendant to the indictment herein, and upon the questions of law arising upon said demurrer the judges were divided and opposed in opinion. It is now, therefore, ordered that the clerk of this court make out and certify to the next term of the Supreme Court of the United States, a transcript of the record and proceedings in this cause, as fully as the same are described in the certificate of *of* division this day filed.

MEMO.—His honor Judge Treat took no part in the hearing of this case.

Said certificate of division being in words and figures following, to wit:

Certificate of division.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

UNITED STATES
vs.
EDWARD P. CURTIS. } No. 1532.

84 This is an indictment under § 5392, of which indictment the following is a copy:

(See page 1.)

To the said indictment a demurrer was interposed as follows:

(See page 82.)

And the said demurrer to the said indictment coming on to be heard at this term the following questions arose:

1st. Whether, under the laws of the United States, a notary public for the county of St. Louis and State of Missouri was an officer or person competent to administer the oath upon the falsity of which the said indictment is laid.

2nd. Whether the affidavit or oath set forth in said indictment, to wit, the verification of a report by a national banking association, as required by § 5211 of said Revised Statutes, by the defendant, cashier of said association, is, if wilfully false, punishable under the provisions of § 5392 of the Revised Statutes of the United States.

On which questions the judges were divided and opposed in opinion; whereupon, upon motion of the plaintiff, by its attorney, that the said points upon which the disagreement hath happened may, during the term, be stated under the direction of the judges and certified under the seal of the court to the Supreme Court to be finally decided:

85 It is ordered that the foregoing state of the pleadings and questions be certified according to the request of plaintiff by its attorney, and as required by the law in that case made and provided.

Given under our hands and seals this fourth day of February, A. D. 1880.

GEO. W. McCRARY, [SEAL.]
HENRY C. CALDWELL. [SEAL.]

86 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the writing hereto attached to be a transcript of the pleadings and proceedings in case No. 1532 of The United States, plaintiff, against Edward P. Curtis, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal

of said court, at office in the city of St. Louis, in said district, this 1st day of September, in the year of our Lord eighteen hundred and eighty.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY, *Deputy.*

(Indorsement on cover:) No. 408. The United States, plaintiff, vs. Edward P. Curtis. E. Missouri. C. C. U. S. Filed 18th October, 1880.



17-671

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

UNITED STATES
v.
EDWARD P. CURTIS. } No. 408.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

UNITED STATES
v.
EDWARD P. CURTIS. } No. 408.

BRIEF FOR THE UNITED STATES.

This is an indictment for perjury under section 5392, Revised Statutes, which provides that—

> Every person who, having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished * * * .

The offenses, as set out in the indictment, are that the defendant, being cashier of the National Bank of Missouri, in St. Louis, committed willful perjury in that he swore to the truth of certain false statements contained in several reports made by said bank to the Comptroller of the Currency.

The defendant demurred to the indictment (R., p. 30), and on the argument of the demurrer the court were divided and opposed in opinion on two questions, which have been certified to this court (R.; p. 31), and which we will consider in their order.

FIRST.

Whether, under the laws of the United States, a notary public for the County of St. Louis and State of Missouri was an officer or person competent to administer the oath upon the falsity of which the said indictment is laid.

The chapter on national banks, in the Revised Statutes, requires the sanction of an oath in each of ten or more instances, but fails to designate the officer or officers by whom such oath may be administered.

But it was not necessary that there should have been a designation of the officer or officers before whom such oaths should be taken, seeing that it was the intention of section 5392 to visit with the pains and penalties of perjury every person who should bear false witness, having first taken an oath to bear true witness, before a tribunal, officer, or person competent to administer an oath in any case in which an oath is authorized by a law of the United States.

When we reflect that it has been usual for Congress, from a very early period in the history of the government, to empower various State officers to administer oaths and perform other functions under Federal law, it would seem to be to ignore the obvious sense of language to restrict the words "tribunal, officer, or person" to such Federal or State functionaries as had been theretofore specially empowered

by Congress to administer oaths. It is, we submit, inadmissible to resort to construction for such a purpose in the absence of anything in the context of the statute to require it. Congress having made it perjury to take a false oath in a matter of Federal concernment before any "competent tribunal, officer, or person," the inference from the silence of the statute touching the officers by whom should be administered the oaths required to be taken by the national-bank law is, it would seem, irresistible that it was the intention that such oaths might be administered by any functionary or person, State or Federal, competent to administer an oath, for that false swearing before such an officer or person would be perjury under section 5392. Is it not reasonable to presume that the intention of Congress in this behalf was co-extensive with the sanction afforded by the section in question; in other words, was it not the meaning of Congress that any oath called for by the national-bank law might be taken before any officer, State or Federal, before whom false swearing would be perjury under section 5392?

But should this view be not founded, we submit that under section 1778, Rev. Stats., the oaths taken by the defendant were authorized by law.

This section is as follows:

SEC. 1778. In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any State, district, or Territory, or any of the commissioners of the circuit courts, and, when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace.

Now, as we read this provision, the oaths administered by the notary public in this case were authorized by Congress if it can be shown that they might have been taken before a justice of the peace in any State or Territory, or in the District of Columbia.

But such an oath might have been administered to the defendant by a justice of the peace in the District of Columbia. This appears by the thirty-first section of the act of Maryland of 1796, ch. 43, § 31, re-enacted by Congress by act 27th February, 1801, § 1, and § 11 (2 Stats., 103, 107). In this Maryland act the authority of justices of the peace to administer oaths or affidavits, generally, is distinctly recognized.

We feel warranted in saying that the power to administer oaths in all cases required by law has always been regarded as a part of the civil jurisdiction or power of justices of the peace in this District.

The precise point here involved has been recently decided by the United States circuit court for the eastern district of Virginia. (United States *v.* Neale, vol. 14, Federal Reporter, p. 767.)

But, supposing that the laws of the United States, authorizing Federal and State officers to administer oaths in certain cases, do not embrace oaths required to be taken by the bank law, must not the omission in that law to designate the officers before whom such oaths should be taken be supplied by implication to avoid the perilous alternative of administering so important a statute without the sanctions upon which Congress relied for the protection of the banks from faithlessness in their officers and agents?

That Congress intended that the oaths prescribed in

the chapter on national banks should be taken before an officer or officers of some sort is clear enough, if we are to imply the means, as to which the statute is silent, to compass the end, as to which the statute has spoken.

But was it the intention of Congress that such officers should be officers of the Federal Government exclusively? We maintain that it was not, because from the beginning of the government, as has been already said, it has been usual with Congress to give certain State officers authority to administer oaths in cases arising under Federal laws. At first, justices of the peace in the States and Territories were authorized to administer oaths and take acknowledgments for Federal purposes; and afterwards, in 1850, notaries public of the States and Territories were authorized to exercise the same powers (9 Stat., p. 458). Why, then, is it not just as consequential to infer that Congress intended that the oaths prescribed in the national-bank law might be taken before any notary public or justice of the peace of a State as before any Federal officer commissioned to administer oaths? The implication is just as strong in favor of one set of officers as the other.

This reasoning is fully sustained by the case of United States *v.* Bailey (9 Pet., 238), where under an authority given the Secretary of the Treasury by Congress to adjust certain accounts, the Secretary made a regulation that all claims presented should be verified by affidavit, which might be made before any justice of the peace of any State. The defendant made such an affidavit and was indicted in a court of the United States for false swearing, and it was held the indictment was sustainable. This

case was well considered, as the opinion of the court shows, and as would seem to follow from the vigorous dissent of Mr. Justice McLean.

It will be observed that, in the case referred to, the law under which the Secretary acted made no reference to an oath, so that both the power of the Secretary to require the oath and to authorize the justice to administer it were raised by implication. In putting this interpretation on the law, the court refer to the inveterate practice of Congress in authorizing State magistrates to administer oaths, and to the constant usage in the Treasury Department to require claims to be verified by affidavit, and say that "Congress must be presumed to have legislated under this known state of the laws and usage of the Treasury Department."

It is to this "habit of legislation" that we appeal as furnishing ample ground for the implication that the notary public who administered the oath in the case at bar was fully empowered to do so.

SECOND.

Whether the affidavit or oath set forth in said indictment, to wit, the verification of a report by a national-banking association, as required by section 5211 of said Revised Statutes, by the defendant cashier of said association, is, if willfully false, punishable under the provisions of section 5392 of the Revised Statutes of the United States.

Section 5392 Revised Statutes denounces and punishes as perjury willful false swearing as to any material matter, whether in testifying or in certifying to any declaration or certificate "in any case"; that is, *whenever* a law of the United States authorizes such oath to be administered.

Section 5211 Revised Statutes, under which the oath in question was taken, is as follows:

> Every association shall make to the Comptroller of the Currency not less than five reports during each year according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signatures of at least three of the directors. * * * The Comptroller shall also have power to call for special reports from any particular association whenever, in his judgment, the same are necessary in order to a full and complete knowledge of its condition.

This section plainly requires that the reports of every association to the Comptroller of the Currency shall be verified by the oath or affirmation of the president or cashier of such association. It must follow, then, that the oaths taken by the defendant Curtis to the truth of the reports of the National Bank of Missouri, in Saint Louis, to the Comptroller of the Currency, were oaths taken in cases in which a law of the United States authorized such oaths to be taken, and that the defendant has incurred the penalties of section 5392.

The force of the labored argument to refine away the statute by showing that "any case" means a judicial proceeding, is not felt. On the contrary, to employ such a reading is, we submit, nothing less than to put into the statute what Congress never intended to be there.

The argument deduced from the act of 1825 (4 Stats., 115) is that inasmuch as the words *in any case* used in that act meant, as counsel assume, a judicial proceeding, so they must have that sense in section 5392. Supposing now this reading of the act of 1825 to be correct, must it not be on the ground that the words "*or other proceeding*" compel resort to the restricted sense, and is not the use of

the words "in any case" in the Revised Statutes *without* those other words of qualification and limitation indicative of an intention to employ them thereafter in a larger sense and to create a new crime of perjury commensurate with the public wants? Congress found that the common weal demanded something broader than the technical common-law offense of perjury, and they set to work to supply the *desideratum*.

As the principle *noscitur a sociis* required that the word "cases," in the grant of judicial power in the Constitution, should be confined to judicial proceedings, the force of the argument drawn from that source is not perceived, any more than is the force of the argument deduced from the use of the words "in any case" in section 101, Rev. Stats., where the context imposes a limitation, if the interpretation put upon that section is correct, which is not conceded.

Nor is it perceived that the fact that Congress has, in the Revised Statutes, made several instances of false swearing punishable, which would have come within section 5392, if our reading is correct, an argument to show that Congress understood that such instances did not fall within that section. Such legislation is merely *ex abundanti cautela*, or for the purpose of producing a greater effect by making the sanction in each provision *specific*. To adopt any such canon of construction as the one insisted on in this particular would be fraught with great evil, and often lead to consequences never contemplated by Congress.

Nothing would appear to be more unreasonable than to assume that Congress failed to provide for cases of false

swearing under so important and so maturely considered a law as the bank act. The silence of the act, then, on that head is, it would seem, quite conclusive that Congress considered that such cases were covered by existing legislation.

It is submitted that both of the questions certified should be answered in the affirmative.

The range of the defendants' brief is beyond the points certified by the court below, but, as the jurisdiction of this court is confined to the points certified, it would be useless for us to notice anything in the brief that is irrelevant to them.

WM. A. MAURY,
Assistant Attorney-General.

9922——2

OFFICE SUPREME COURT U.S.
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1882.

THE UNITED STATES vs. EDWARD P. CURTIS.

On Certificate of Division from the Circuit Court for the Eastern District of Missouri, upon questions under Indictment for Perjury based on Section 5392 Revised Statutes.

BRIEF OF CHESTER H. KRUM,

Of Counsel for Defendant.

LEVISON & BLYTHE STATIONERY CO. PRINT. ST. LOUIS

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On Certificate of Division from the Circuit Court for the Eastern District of Missouri, upon questions under Indictment for Perjury based on Section 5392 Revised Statutes.

BRIEF OF CHESTER H. KRUM, OF COUNSEL FOR DEFENDANT.

This case comes here on certificate of division of opinion from the Circuit Court for the Eastern District of Missouri. The questions certified arise under an indictment for perjury, found under Section 5392 of the Revised Statutes. The questions touching which the judges differed, are as follows:

1st. Whether, under the laws of the United States, a notary public for the county of St. Louis and State of Missouri was an officer or person competent to administer the oath upon the falsity of which the said indictment is laid.

2nd. Whether the affidavit or oath set forth in said indictment, to-wit, the verification of a report by a national banking association, as required by Section 5211 of said Revised Statutes, by the defendant, cashier of said association, is, if wilfully false, punishable under the provisions of Section 5392 of the Revised Statutes of the United States.

The material portions of the section under which the indictment has been found, are: Every person who having taken an oath, before a *competent* tribunal, officer, or person, in any CASE in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, *declaration*, deposition, or certificate *by him subscribed* is true, wilfully, and contrary to such oath, states or subscribes any material matter which he does not believe to be true, shall be guilty of perjury.

The indictment contains five counts, which are alike except as to dates. The difference in dates is material only as evidencing separate occasions, and as bearing upon one point in the argument in support of the demurrer.

The defendant, at the dates named in the respective counts, was cashier of the National Bank of the State of Missouri. Section 5211 of the Revised Statutes requires every national-banking association to make to the comptroller of the currency not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier of such association, and attested by the signature of at least three of the directors. Accordingly, the first count of the indictment (which is a *verbatim* copy of all the others, except as to dates and other matters

which are not material to this discussion) contains the following allegations:

That on the 18th day of July, 1876, the comptroller of the currency of the United States made a certain request and requisition to and upon said association for a report, to be made according to the form theretofore prescribed by him, the said comptroller, exhibiting the resources and liabilities of said association at the close of the business of said association on a certain day, then passed, specified by said comptroller in said request and requisition, that is to say, at the close of the business of said association on the 30th day of June, 1876.

That on the 18th day of July, 1876, the said association did prepare a certain report, according to the form theretofore prescribed by the comptroller of the currency, to be transmitted as required by law, to said comptroller, in compliance with the said request and requisition; which said report, so prepared as aforesaid, to be transmitted as aforesaid, on the 18th day of July, purported to exhibit, according to the said form prescribed as aforesaid, in detail and under the appropriate heads, the resources and liabilities of said association at the close of the business of said association on the 30th day of June, 1876: and which said report, so prepared as aforesaid, did, on the said 18th day of July, indicate and declare, in substance and effect, among other things, under the heads of loans and discounts, on said report, that the close of the business of said association on the said 30th day of June, there were due and owing to said association, and included in the resources of said association, as a portion of loans and discounts, no debts such as are defined by the provisions of sect. 5204 of the Revised Statutes of the United States to be bad debts; and which said report did, on said 18th day of July, indicate and declare, in substance and effect, among other things, under the head of loans and discounts, on said report, that at the close of the business of said association on the 30th day of June, the liabilities to said association of the directors of said association, as payors, were $610,682.95; and which said report, so prepared as aforesaid, did, on the said 18th day of July, indicate and declare, in substance and effect, among other things, under the head of checks and other cash items, on said report, that at the close of the business of said association on the 30th day of June,

there were in and among the resources of said association checks for the aggregate sum of $84,511.91; and which said report, so prepared as aforesaid, did, on the said 18th day of July, indicate and declare, in substance and effect, among other things, under the head of overdrafts, on said report, that at the close of the business of said association on the said 30th day of June, there were among the resources of said association no checks or drafts upon which money had been by said association paid, in excess of the money theretofore deposited with said association to the credit of the makers of said checks or drafts; and which said report, so prepared as aforesaid, did, on the said 18th day of July, indicate and declare, in substance and effect, among other things, as follows: That the surplus funds of said association at the close of the business of said association on the 30th day of June was $243,462.69; that the amount of currency on deposit with and in said association, at the close of the business of said association on the day last aforesaid, known and designated by said association as individual deposits subject to check, was $1,542,456.36; that the amount of money due from said association to other national banks was, at the close of the business of said association on the day last aforesaid, the sum of $136,304.88; and which said report, so prepared as aforesaid, was, on the said 18th day of July, required, by said act of Congress first aforesaid, to be verified by the oath or affirmation of the president or cashier of said association.

That said Edward P. Curtis, on said 18th day of July, 1876, at said district, being then and there cashier of said association, wickedly and unlawfully intending to deceive the comptroller and the public, and certain persons to said jurors unknown, with respect to the true condition of the resources and liabilities of said association at the close of the business of said association on the 30th day of June, 1876, and wrongfully, wickedly, and unlawfully contriving to, and intending to, misrepresent to the said comptroller, and to the public, the true condition of the resources and liabilities of said association at the close of the business of said association at the close of the day last aforesaid, did produce and exhibit the said report, so made as aforesaid, for verification by the oath of him, said Edward P. Curtis, cashier as aforesaid, to and before one John M. Dickson, then and there a notary public

within and for the county of St. Louis, within said district, and, as such notary, a person having competent authority to administer an oath to him, the said Edward P. Curtis, in the premises; which said report, so produced and exhibited to and before the said John M. Dickson, notary as aforesaid, had on the day and year last aforesaid, thereunder written a certain *declaration*, which said declaration was, in substance and effect, as follows:

I, Edward P. Curtis, cashier of the National Bank of the State of Missouri, in St. Louis, do solemnly swear that the above statement is true, to the best of my knowledge and belief.

Which said declaration was, on the day last aforesaid, and at said district, *subscribed* by him, the said Edward P. Curtis, cashier as aforesaid; that the said Edward P. Curtis, cashier as aforesaid, being, on the day last aforesaid, and at said district, before and by the said John M. Dickson, notary as aforesaid, duly sworn, did, on the day last aforesaid, and at said district, *take his corporal oath concerning the truth of the said declaration subscribed by him*, as aforesaid, which said oath was, on the day last aforesaid, and at said district, *in a case* in which a law of the United States, to wit, the act of Congress first aforesaid, authorized an oath to be administered as aforesaid; that it became and was, on the day last aforesaid, at said district, and at the time said Edward P. Curtis, cashier aforesaid, was sworn and took his corporal oath as aforesaid, *material* that the said comptroller should receive, and that the said report should exhibit a true and correct statement of the resources and liabilities of the said association at the close of the business of said association on the said 30th day of June.

Then follow similar allegations as to the materiality of the other items exhibited by the report. And the count alleges further: That the said Edward P. Curtis, cashier as aforesaid, being so sworn as aforesaid, wickedly and corruptly devising to suppress a full disclosure of the condition and resources of said association, did, on the 18th day of July, at said district, and at the time he was so sworn, and took his corporal oath as aforesaid in and by his said oath to said declaration, before the said John M. Dickson, notary as aforesaid, being, on said 18th day of July, and at said district, a person having competent authority to administer said oath to said dec-

laration in that behalf falsely, corruptly, knowingly wilfully, maliciously, and wickedly state, declare, and swear, in substance, and to the effect following, that is to say:—

"I, Edward P. Curtis, cashier of the National Bank of the State of Missouri, in St. Louis, do solemnly swear that the above statement"—meaning the said report, so prepared by said association as aforesaid, and purporting to show the resources and liabilities of said association at the close of the business of said association on the 30th day of June—"is true to the best of my knowledge and belief"—meaning to the best of the knowledge and belief of him, the said Edward P. Curtis, as cashier aforesaid; which said report, so prepared by said association, and verified by the said oath and declaration aforesaid, was afterwards, to wit, on said 18th day of July, attested by Barton Bates, James H. Britton, and Julius S. Walsh, directors of said association; and which said report was afterwards, to wit, on said 18th day of July, transmitted by said association to said comptroller. Whereas, in truth and in fact, the said report so purporting, as aforesaid, to exhibit the resources and liabilities of the said association at the close of the business of said association on the said 30th day of June, was not on the said 18th day of July, and at the time said oath was taken, in all respects true, as he, the said Edward P. Curtis, cashier aforesaid, well knew, at the time he was sworn and took said oath, and made the said declaration aforesaid.

The count then proceeds to negative the statements contained in the *report*, and to falsify its averments; all of which allegations it is not material now to consider.

The count concludes that, in and by his *oath and declaration to said report*, the defendant did commit wilful and corrupt perjury.

In view of the allegations of this indictment, I respectfully submit, that the questions certified should be answered adversely to the indictment.

I.

Under the laws of the United States, a notary public for the county of St. Louis and State of Missouri, at the respective dates laid in the counts of the indictment, was not an officer or person competent to administer the oath upon whose falsity the indictment has been based.

The dates are as follows:—

First count—July 18, 1876.
Second count—October 10, 1876.
Third count—January 15, 1877.
Fourth count—January 26, 1877.
Fifth count—April 5, 1877.

I assume, at the outset, that the competency of the officer is to be determined by reference to the statutory laws of the United States. This proceeding has arisen within and by virtue of the Federal jurisdiction. The officer must have been expressly authorized by a statute of the United States to administer oaths in proceedings directed by the laws of the United States, or he was possessed of no competency whatever for the purposes of Federal jurisdiction. A State officer, not authorized by a statute of the United States, cannot lawfully administer an oath required by the laws of the United States, so as to make the affiant guilty of *perjury*, if he swear falsely. Perjury cannot be predicated upon an oath administered in Illinois by an officer authorized by Missouri to administer oaths within the latter State. The proof of the execution of a deed cannot be taken by a judge of the State of New York, out of the jurisdiction of that State. It must, therefore, I respectfully submit, be accepted as a fundamental proposition in this case that the competency of the officer must result from a grant of authority under the Federal laws.

Muir *vs.* The State, 8 Blackf. 154;
The State *vs.* Hayward, 1 Nott & M. 546;
Jackson *vs.* Humphrey, 1 Johns. 498;
United States *vs.* Bailey, 9 Pet. 238 (Justice McLean's opinion);
People *vs.* Travis, 4 Parker, C. R. 213;

Referring now to the laws of the United States, it will be found that the authority to administer oaths, conferred upon notaries public, is exceedingly limited.

In 1850, by the act of September 16 (9 Stats. at Large, 458), it was provided that in all cases in which, *under the laws of the United States*, oaths might then be taken or made before any justice or justice of the peace of any State or Territory, such oaths might thereafter be taken or made by or before any notary public duly appointed in any State or Territory.

In 1854, by the act of July 29 (10 Stats. at Large, 315), notaries public were authorized to *take depositions*, and and do such other acts in relation *to evidence to be used in the courts of the United States*, in the same manner and with the same effect as commissioners to take acknowledgments of bail and affidavits might then lawfully take or do. This section was repealed by the revision of 1873, and Judge Woodruff stated that in the courts of the United States the authority of a notary public to take affidavits to be used in the Federal courts had expressly been denied.

Bank *vs.* Imhauer, 10 Off. Gaz. Patent Office, 907.

In 1874, by the act of June 22 (18 Stats. at Large, 186), notaries public were authorized to administer oaths in proof of debts in bankruptcy. These are all of the statutes in relation to oaths administered by notaries public which I have been able to find, prior to August 15, 1876.

The acts in relation to commissioners of the Circuit Courts confer no authority upon notaries which can rem-

edy the difficulty. The Circuit Courts are authorized to appoint commissioners, who are to exercise such powers as may be "*expressly*" conferred upon them by the laws of the United States.

The act of March 2, 1793 (1 Stats. 334), authorized the appointment of discreet persons to take bail in certain parts of Maine and Kentucky.

The act for the more convenient taking of affidavits and bail in *civil causes*, February 20, 1812 (2 Stats. 679), conferred authority to appoint persons, in *cases* where such affidavits were by law admissible, to take acknowledgments of bail and affidavits.

The act of March 1, 1817 (3 Stats. 350), conferred authority upon commissioners to take affidavits and bail in *civil causes*, to be used in the District Courts.

The act September 16, 1850 (9 Stats. 458), gave commissioners power to administer oaths where justices of the peace might.

These are all of the statutes which are pertinent, as relating to the jurisdiction of commissioners to administer oaths. *Down to August 15, 1876, then, under the laws of the United States, notaries public had no authority whatever to administer oaths, except in proof of debts in bankruptcy.* Even their authority to take oaths in civil causes was revoked by the revision of 1873. *Commissioners were authorized to take affidavits in civil causes, administer oaths in proof of debts in bankruptcy, and to take recognizance of bail; but, in other matters, even commissioners were limited to the authority granted by Congress to justices of the peace.* Commissioners were on a footing with justices of the peace, but notaries public had no such authority.

It is proper, therefore, to determine the authority to take affidavits and administer oaths which Congress had conferred upon justices of the peace.

By the act of September 24, 1789 (1 Stats. at Large,

91), as amended by the act of March 2, 1793 (Id. 334), and that of August 22, 1842 (5 Stats. 516), justices were authorized to arrest and admit to bail offenders against the laws of the United States.

By the act of May 23, 1850 (9 Stats. 439), justices were authorized to administer oaths to assistant marshals under the census laws. The various acts in relation to the District of Columbia gave limited jurisdiction to justices of the peace within that District.

The act of May 1, 1876 (19 Stats. 43), authorized justices of the peace to administer oaths of office to certain Territorial officers. I have examined the statutes with great care, and I have been unable to find anything by way of authority in justices of the peace to administer oaths under the laws of the United States.

I conclude, therefore, with confidence, that down to August 15, 1876, notaries public could not administer oaths in proceedings under the National-Bank Act. They had no authority whatever in this respect. By the act of August 15, 1876 (19 Stats. 206,) notaries public were authorized to take affidavits in the same manner and with the same effect as commissioners of the Circuit Courts. *It having been already demonstrated that commissioners could administer oaths only where justices of the peace could (except in the instances which I have specified), and the authority of justices having been shown to be limited to recognizance of bail and oaths of office in the Territories, it follows, that down to August 15, 1876, notaries public could not administer lawful oaths under the act in relation to national banks.* Since that date there has been no enlargement of the authority. On the contrary, since this indictment was found, Congress has recognized the want of authority theretofore existing in notaries public by conferring upon them power to administer oaths in matters like that now under consideration.

21 Statutes at Large, p. 352.

I therefore respectfully submit, that I have successfully demonstrated, that no statute of the United States authorized a notary public to administer an oath under the Bank Act, at any of the dates laid in the indictment.

But, it may be urged on the part of the United States that a regulation may have been prescribed by the Comptroller of the Currency, under which notaries public may have been authorized to administer oaths in taking affidavits to bank reports. Even more may be claimed. It may be contended that the mere acquiescence on the part of the comptroller in the custom of having notaries take such affidavits, and his acceptance of bank reports when so verified, would be sufficient to render notaries competent officers, within the meaning of the section defining perjury. But, if such position be taken by the United States, it cannot easily be maintained. It is true that the commission or authority of the court or person before whom perjury was committed need not be set forth in the indictment. It is sufficient to aver that the court or person who administered the oath had competent authority to administer such oath. Furthermore, it is true that this court, in Bailey's case (9 Pet. 238), held that where an oath is taken before a State or national magistrate, authorized to administer oaths in pursuance of regulations prescribed by the treasury department, or in conformity with the practice and usage of the treasury department, so that the affidavit would be admissible evidence at the department in support of a claim against the United States, and the party making the oath swears falsely, the case is within the purview of the act of March 1, 1823.

But the ruling, when properly understood, will be seen to furnish no authority for the assertion that an indictment for perjury can be lawfully found upon a charge of having made a false affidavit to a national bank report, because it may have been the custom of the commissioner to accept such reports when the verification

was made before individuals not authorized by law to administer the oath which is required by the statute in relation to national banks.

The opinion of Mr. Justice Story (from which Mr. Justice McLean makes a strong dissent) in the Bailey case is well guarded, and is expressly limited to the statute before the court. The statute provided that if any person should swear or affirm falsely touching the expenditure of public money, or in support of any claim against the United States, he or she should, upon conviction, *suffer as "for wilful corrupt perjury."* "That act," the learned justice says, "does not create or punish the crime of perjury, technically considered. But it creates a new and substantive offense of false swearing, and punishes it in the same manner as perjury."

The act of 1832 provided for the payment of certain claims against the United States in the State of Virginia. The third section (4 Stats. at Large, 564) authorized and directed the secretary of the treasury to adjust and settle certain claims named in the section. It was not provided that the claims should be verified by affidavit. No provision was made for either a form of claim, or any other mode of procedure in securing its establishment. The statute was silent. The secretary was directed to adjust the claims. The court do not consider "whether an oath taken before a mere private or official person, not authorized to administer an oath generally, or in special cases, or not specially authorized, recognized, or allowed by the regulations or practice of the treasury department as competent to administer an oath in support of any claim against the United States, would, though the claim should be admitted or acted upon in the treasury department under such a supposed sanction, be within the provision of the act of 1823." But the court say that, as the power to adjust the claims is given, the authority to exert the means necessary to that end must thereby be implied. Therefore, the secretary must be held to have been empowered to require suitable vouchers, and to prescribe regulations necessary to prevent fraud and im-

position. And recourse having been had to various statutes requiring claims for pensions to be verified by affidavit, and to a constant practice of the department to require claims of all sorts to be supported by affidavit, the conclusion was reached that when, by regulation, the secretary required a claim under the act of 1832 to be supported by affidavit, and authorized a justice of the peace to take such affidavit, the oath came within the purview of the act of 1823.

How, therefore, does the Bailey case stand as even persuasive authority in the case at bar? There, the offense was false swearing. Here, the offense charged is perjury. There, the act of 1832 was silent in regard to both the form of claim and the manner of its proof. Here, the Bank Act requires the report,—provides that its form shall be prescribed by the comptroller, and directs that it shall be verified by affidavit of the president or cashier. Under the special authority to adjust claims under the act of 1832, the secretary was held to be vested with the implied power to prescribe regulations under which the proof of claims should be made. But the National-Bank Act expressly limits the authority of the comptroller to demanding the report and prescribing its form.

Congress has undertaken to regulate the national banks, by the express terms of the Bank Act. That act tells the comptroller just what he may do. His authority is limited by the express terms of the act. He is not left to conduct the system of national banks. Congress has imposed the limitations under which that system shall be carried on. From the organization of a national bank to the close of its business career, what it shall do, and how it shall be carried on, depend not on the comptroller, but upon the express letter of the statute. The comptroller cannot regulate the national-bank system, except as far as Congress has expressly given him authority.

He may determine what name shall be given to a national bank, but the method by which the acknowledgment of the certificate of organization shall be evidenced to the comptroller is taken out of his hands, and prescribed by Section 5135 of the Revised Statutes.

He cannot require oaths by virtue of an authority to be implied from a general power of control. Whenever an oath is required, under the national-banking system, it is required by the statute itself. The statute in relation to perjury provides that the case in which the oath is taken must be one in which a law of the United States authorizes such oath to be taken. Nothing can result from a regulation or custom of a department. *The authority to require the oath must be express, and not implied.* This being the undoubted fact, it is idle to say that, while the requirement of the oath must have been expressed in the statute, yet the authority to designate any individual to administer such oath may result from implication. Section 5147 requires each director of a banking association to take an official oath before entering upon his duty. "Such oath, subscribed by the director making it, and certified by the *officer* before whom it is taken, shall be immediately transmitted to the comptroller of the currency, and shall be filed and preserved in his office." What officer shall be competent to administer this oath? The Bank Act does not inform your honors. Shall it be any officer designated by the comptroller? Shall the acquiesence of the comptroller in the receipt (if you please) in his office of hundreds of oaths, unlawfully administered, operate to authorize the individuals who have acted under such acquiescence to further administer such oaths? This certainly cannot have been the intention of Congress. There is nothing in the Bank Act which can justify such a conclusion. The oaths required by that act are to be taken before an officer authorized to administer them by virtue of the express terms of some law of the United States. It is the comptroller's duty to reject every report, or oath,

which does not satisfy this requirement. He cannot, either by acquiesence or by direct designation, authorize an individual to administer oaths which the Bank Act requires to be taken. That authority must come from Congress, and Congress alone.

I submit, therefore, that a notary public is not, and was not, an officer or person competent to administer an oath under the Bank Act, and that for this reason the questions certified should be answered adversely to the indictment.

II.

The making of a report by a national banking association, and the verification of such report under Section 5211 do not constitute a *case*, within the meaning of the statute, which defines the crime of perjury.

The language of the statute is: "Every person who, having taken an oath * * * in *any case* in which a law of the United States authorizes an oath to be administered," etc.

What is the meaning of this statute? Do the words "in any case" mean "whenever," or "under all circumstances"? The United States would have the statute construed so as to make it read "in case" every person, etc. No such reading can be given to the statute, and give it an intelligent meaning. Does not the word rather mean in a cause or in a controversy determinable by some method of judicial procedure. I respectfully urge the latter definition as being clearly within the intention of Congress.

In the first place, had it been the intention of the law-makers to provide that every instance of false swearing, where the laws authorized the oath, should constitute perjury, that intention would have been evidenced by the use of words whose ordinary acceptation would have removed all doubt. If Congress meant *whenever*, by the use of the terms *in any case*, they would have used the term *whenever*, instead of the words actually employed. Had it been the intention to punish every act of false swearing as perjury, the section of the statute would not have been found in the chapter limited to "Crimes against Justice." I might rest content with these suggestions; but the whole course of legislation in regard to perjury and false swearing is so conclusive,

as I conceive, in support of my ground of objection, that I respectfully ask the indulgence of the court in making a more complete exposition.

Taking acts (long since repealed, but yet properly to be referred to as *in pari materia*) relating to perjury, I find what is to my mind most satisfactory evidence of the intention of Congress. The word *case* was used in its signification of a controversy in court.

In the act of April 30, 1790 (1 Stats. at Large, 115), it was provided that if any person should wilfully and corruptly commit perjury "*in any suit, controversy, matter, or cause depending in any of the courts of the United States*," he should be punished, etc. Here the court will observe that the constituent elements of perjury, other than the occasion of the oath, were left to their common-law definitions and requirements. But perjury as to the occasion was limited to *a controversy, a suit, a matter, or a cause* pending in court.

By the act of March 3, 1825 (4 Stats. at Large, 118), it was provided: "If any person, in *any case, matter, hearing or other proceeding*, where an oath or affirmation shall be required to be taken or administered, under or by any law or laws of the United States, shall, upon the taking of such oath or affirmation, knowingly and willingly swear or affirm falsely, every person so offending shall be deemed guilty of perjury." This act defines the crime of perjury without reference to the common law. In what sense is the term *in any case* used in this statute? It cannot be said, properly, that the term means *whenever*, and that Congress intended to cover all instances of false swearing. The crime denounced is perjury. False swearing was even then a separate and distinct offense, under the act of 1823.

United States *vs.* Bailey, 9 Pet. 238.

The term *in any case* is used, therefore, in its restricted application to a controversy in court. The word *matter* is so used, as the act of 1790 shows. The word

hearing has reference to some form of judical procedure. The words "*other proceeding*" are to be taken in the same sense as the more specified terms which precede them. "The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction."

United States *vs.* Hiltberger, 5 Wheat. 96;
Bishop Stat. Crimes, Sec. 80.

And while this very act was in force, containing these words, *in any case*, by the act of August 30, 1842 (5 Stats. at Large, 563, sect. 17), false swearing upon examination of owners, importers, and consignees was declared to constitute perjury. If the act of 1825 covered all instances of false swearing, and made them perjury, Congress would hardly have passed the act of 1842.

I understand the case of the United States *vs.* Nichols (4 McLean, 23), to fully sustain the proposition upon which I thus rely. There, the defendant was indicted for perjury under the act of 1825, for having sworn falsely in a proceeding under the Bankrupt Act. It was held that the act of 1825 defined the crime of perjury generally. It was not confined in its operation to acts passed anterior to its own date. The Bankrupt Law was held to be *in pari materia* with the act of 1825 in regard to oaths taken in proceedings under the former. But in the proceedings in bankruptcy, to bring the matter within the act of 1825, the false swearing must have been charged as *having been done in court.* The bankrupt court was always open. Swearing to the petition was a proceeding in the court.

In the revision of the statutes, all of the words indicating the occasion of the oath were dropped, with the exception of the words *in any case.* The effect was to narrow, rather than to enlarge, the operation of the statute. If, upon the whole section of the act of 1825, where the words *in any case*, and other words are used, an indictment for perjury must have alleged that the oath was

taken in court, certainly, when the other words are dropped, the necessity for limiting the application of the statute to proceedings in court becomes absolutely imperative.

The third article of the Constitution declares, "that the judicial power shall extend to all *cases*, &c. The word case is there used in the same sense as that for which I now contend. The judicial power is "capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case."

Osborn *vs.* United States Bk., 9 Wheat. 819.

So Section 101 Revised Statutes provides, that "the President of the Senate, the Speaker of the House of Representatives, or a chairman of a Committee of the Whole, or of any committee of either House of Congress, is empowered to administer oaths to witnesses in *any case* under their examination." The occasion is not unlimited or general. The word is not used in the sense of whenever, but the occasion is limited to controversies of a judicial nature. The word *case* is used in its narrow and restricted sense, for which I now contend.

My position upon this ground of objection is fortified, again, by reference to repeated legislation in regard to oaths and affidavits under the laws of the United States. The act of 1825, according to the theory of the United States, was broad enough to cover all cases of oaths required under laws of the United States. But the act of 1842 shows that Congress did not so regard the act of 1825. So, the section in the revision under which this indictment was found is broad enough to cover all instances of false swearing, if the theory of the United States can be maintained; yet the Revised Statutes are full of the most satisfactory evidences of a totally different view on the part of Congress.

Article 60 of the Articles of War (Rev. Stats. 235), provides that any person in the military service, who, for

the purpose of obtaining the allowance of any claim against the United States, makes any oath, knowing the same to be false, shall be punished by fine and imprisonment, as a court-martial shall adjudge.

At page 279, there is a similar provision in regard to persons in the naval service.

Section 5438 punishes every person who makes a false affidavit or deposition to support a false claim against the United States.

Section 5395 punishes a person who makes a false oath under the naturalization laws. This was rendered necessary by the fact that the declaration of intention to become a citizen could be made before the clerk, as well as in open court. (See p. 379, subdiv. 6.)

Section 3158 declares that a false statement, made under oath, as to emoluments by an internal revenue officer shall constitute perjury.

Section 2924 makes a similar provision in regard to false swearing before appraisers, revenue collectors, and naval officers, under the laws relating to imports and exports.

These two sections show clearly that Congress never intended Section 5392 to apply to false swearing elsewhere than in judicial proceedings. *If they did, why cover special instances? The offense in each instance is declared to be perjury.* No different remedy is provided. But the instance of making a false oath is brought within the section, from which it would otherwise be excluded.

So, the Laws of 1877–8 (p. 141), provide that the form of affidavit to be made by postmasters upon their returns shall be such as may be prescribed by the postmaster-general, and any postmaster who shall make a false return shall be deemed guilty of a misdemeanor.

The same Laws (p. 28), provide that any person who shall falsely take any oath required in an application for a pension shall be guilty of perjury.

The Laws of 1878–9 (p. 89), require an oath in certain matters affecting timber lands; and if one swears falsely

in taking such oath, he shall be subject to all of the pains and penalties of perjury.

The Laws of 1875-6 (p. 86), declare that the making of a false affidavit by a tax-payer in the District of Columbia shall be perjury, *punishable as provided in Section 5392 of the Revised Statutes.* This is certainly a clear announcement by Congress that the words *in any case* were not intended to be understood as meaning *whenever*, or under all circumstances.

Any person knowingly swearing falsely, in material matter, before the commissioner on Alabama claims, shall be deemed guilty of perjury, "*the same as if such false oath or affirmation had been taken in a judicial proceeding in any of the courts of the United States.*"

18 Stats. at Large, 247, sect. 10.

I might add other illustrations of the evident meaning of the statute, but the foregoing will certainly suffice. Here are sections contemporaneous, in their place in the revision, with Section 5392. Here are statutory provisions made subsequently to the adoption of the revision. And in them all is to be found the repeated recognition by Congress that Section 5392 is to be limited to judicial proceedings. The term "case" means a controversy in court, or under some form of judicial procedure. It does not mean "in every instance" and "under all circumstances." To sustain any other conclusion involves the determination that Congress has enacted many useless laws and superfluous statutes. The charge against the defendant does not come within the words of the statute. It does not come within its reason and spirit, and the mischief it was intended to remedy; and it is a fundamental canon of construction that a criminal charge based upon a statute must satisfy these requirements.

United States *vs.* Skiddy, 11 Pet. 73.

If it be urged that the construction upon which I insist leaves the government remediless, I have only to say that it is not the first instance, in the history of national legislation, in which *casus omissus* has been the conclusion reached by courts of the United States in passing upon the scope of Federal statutes. But the legislature alone can supply the defect.

It is not an offense against the laws of the United States, in a criminal sense, for an officer of a national banking association to make a false report to the comptroller of the currency. The statute is silent on the subject. Hence, in this case, the effort of the prosecution has been to devise some remedy to supply the omission made by Congress. I apprehend that the ambiguity of the present indictment is properly attributable to that cause. For that reason, the evidence of the oath made to the truthfulness of the report is called a declaration, and the defendant is charged with having made oath that the oath so evidenced by the so-called written declaration was true. The attempt may be commendable, perhaps, as ingenious; but the handiwork of the inventor of the new system of putting a grand jury in the place of Congress shows too many imperfections to enable it to stand.

For these reasons, I again respectfully submit that the indictment is fatally defective, and that the defendant should have had judgment upon his demurrer.

III.

The indictment fails to satisfy the requirements of the statute in other respects.

1. The statute requires that the oath shall have been taken that the declaration is *true*.

The indictment does not allege that the defendant made oath that the declaration subscribed by him was *true*. The allegation is, that the defendant took his corporal oath "*concerning the truth of said declaration.*" There is a wide difference between this allegation and the allegation required by the terms of the statute. It is one thing to swear that a declaration subscribed is true; it is a totally different thing to be sworn concerning the truth of such declaration. An oath concerning the truth of a declaration may have been that the declaration is true; but it may have been that the declaration was true in part only, or that it was wholly false. I may be examined as to the truth—concerning the truth—of a given statement attributed to me. I may answer that the statement is true. I may say that it is untrue. In either case the answer results from an examination concerning the truth of the statement. Here, the requirements of a statute are to be satisfied. Surely this cannot follow from an allegation that an oath was taken *in relation* to the truth of a given declaration, or *pertaining* to the truth of such declaration, when the statute provides that the oath taken must have been that the declaration was true.

2. But if it be held that the averments of the indictment are sufficient in the respects last indicated, then I submit that the indictment wholly fails to falsify the

declaration, or to show that the oath as made was untrue.

The indictment states that the banking association prepared the report, and that the defendant produced the document before the notary for verification. A national-bank report is not within the statute. Accordingly, the indictment alleges that the report had written under it a certain declaration. That declaration was: I, Edward P. Curtis, cashier, etc., do solemnly swear that the above statement is true. The allegation is that the defendant made oath concerning the truth of this declaration. In other words, the declaration is that the defendant solemnly swears. The oath set out in the indictment is, that it is true that he solemnly swears. The declaration is, not that the statement is true, but that the defendant swears that it is true. The declarant declares that he solemnly swears! His oath is, that his declaration that he swears is true. I admit that this statement seems to be sheer nonsense. But I contend, with all sincerity, that the indictment reads exactly as I insist it reads. It may be that the grand jury who found this bill may not have looked upon its averments with what Mr. Burke calls "the cold neutrality of an impartial judge," but rather with the idea that a "careless song, with a little nonsense in it, now and then, does not misbecome a monarch."

I ask the indulgence of the court in reinforcing my construction of this extraordinary indictment by recurring again to its allegations. After reciting that the report had thereunder written a certain declaration,—which must have been, in fact, the oath taken by the defendant to the report, and nothing else upon earth,—and that the defendant was duly sworn concerning the truth of such declaration, the indictment proceeds: The said Edward P. Curtis, *being so sworn as aforesaid*, did, at the time he was so sworn, and so took his corporal oath as aforesaid, *in and by his said oath to said decla-*

ration, falsely, etc., state, declare, and swear, in substance and effect: I, Edward P. Curtis, etc., do solemnly swear that the above statement ("meaning the said report so prepared by said association") is true, to the best of my knowledge and belief!

In other words, the defendant was sworn to tell the truth concerning a certain declaration by him subscribed, which declaration was that he solemnly swore that a certain report was true, and, having been so sworn, he proceeded to state, not what pertained to his declaration, but what pertained to the report. And then the indictment proceeds to falsify the report, but utterly ignores the alleged declaration. I fail to find an allegation that the defendant made oath to the truth of the report. He was sworn that the declaration signed by him was true. Then he proceeded to make a statement in regard to the report; he is not alleged to have subscribed the report; he subscribed the declaration. He did not make oath to the report; he made oath to the declaration. The most superficial reading of this wordy effusion of the grand jury must demonstrate how puerile has been their effort to force a bank-report within a statute by calling the oath taken to its correctness a declaration, and alleging that the defendant falsely swore that the oath so taken by him was true. If my client did take the oath charged in this indictment, a commission *de lunatico* ought to issue against him; and it should run as well against the notary who gravely assisted him in the nonsensical performance.

But I assert, with confidence, that an indictment ought not to be sustained, which is so ambiguous, uncertain, and repugnant that one cannot tell whether it was intended to charge that the defendant made oath to a bank-report (in which case the act done would not come within the statute), or that the defendant made oath to the truth of an oath by him subscribed, and then deliberately proceeded to make a statement in regard to

the truth of a report (ignoring his declaration), whereby he relieved himself of matters wholly immaterial to the declaration to whose truth he had solemnly sworn.

3. I have stated that the indictment does not allege that the defendant subscribed the report. He subscribed the declaration alone. This averment becomes material in view of the statute.

It is not alleged that, having subscribed the declaration, and having made oath that the declaration so subscribed was true, the defendant subscribed some material matter which he did not believe to be true. But the allegation is that, having subscribed the declaration, and having made oath to the truth of the declaration as subscribed, the defendant proceeded to make a statement, not in relation to the declaration, but concerning the report.

The statute covers two classes of cases:

1. Where a person is sworn to give oral testimony, or to give his deposition, or to make an oral declaration.

2. Where a person, having subscribed something already written, makes oath that the written matter is true.

In the first case, the statute contemplates a statement to be made after the oath has been taken; for the penalty is imposed where the person wilfully, and contrary to such oath, makes a material statement. But in the second case no statement is contemplated. The penalty is inflicted where the person wilfully, and contrary to his oath, subscribes any material matter which he does not believe to be true.

Here, the indictment alleges a statement applicable to the first class of cases indicated by the statute, but does so under averments which relate to the second class alone. And even here there is no allegation that the defendant, having made the oath, wilfully, and contrary

to such oath, subscribed some material matter which he did not believe to be true.

I therefore respectfully submit that the questions certified should be answered adversely to the indictment.

Chester H. Krum ~~CHESTER H. KRUM~~,
Of Counsel for Defendant.